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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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In the Matters of:

Lead Case No.

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RESIDENTIAL CAPITAL, LLC, et al.,

12-12020-mg

8

Debtors.

9

- - - - -x

10

WAGNER,

11

Plaintiff,

Adv. Proc. No.

12

- against -

12-01913-mg

13

RESIDENTIAL FUNDING COMPANY, LLC, et al.,

14

Defendants.

15

- - - - -x

16

WILLIAMS,

17

Plaintiff,

Adv. Proc. No.

18

- against -

12-01896-mg

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GMAC MORTGAGE LLC,

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Defendant.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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December 20, 2012

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10:07 AM

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B E F O R E:

23

HON. MARTIN GLENN

24

U.S. BANKRUPTCY JUDGE

25

1
2 Doc # 2049 Debtors' Motion for a Supplemental Order Under
3 Bankruptcy Code Sections 105(a), 363, 503(b)(1), 507(a)(2),
4 1107(a) and 1108 and Bankruptcy Rule 9019 to the Final Wages
5 Order (I) Authorizing and Directing the Debtors to Reimburse
6 Ally Financial Inc. for Payments Made to the Debtors' Employees
7 on Account of Compensation Issued on or After the Petition
8 Date; (II) Granting Ally Financial Inc. an Administrative
9 Expense Claim on Account of Such Payments; (III) Granting Ally
10 Financial Inc. a Limited Release; and (IV) Authorizing the
11 Debtors to Establish and Fund an Escrow Account for the Benefit
12 of Ally Financial Inc. on Account of Such Administrative
13 Expense Claims, including Additional Amounts to the Escrow
14 Account as Necessary.

15
16 (CC: Doc# 2355) Debtors' Motion for the Entry of an Order
17 Further Extending Their Exclusive Periods to File a Chapter 11
18 Plan and Solicit Acceptances Thereof.

19
20 (CC: Doc# 2357) Debtors' Motion for Appointment of a Mediator.

21
22 Status Conference RE: Examiner's Investigation.
23
24
25

Doc# 2326 Debtors' Motion for Order Under 11 U.S.C. 105(a),
365(a) and 554(a), Fed. R. Bankr. P. 6006 and 9014, and Local
Bankruptcy Rule 6006-1 Approving Procedures Regarding the
Future Rejection of Executory Contracts and Unexpired Leases.

(Doc no. 1244) Motion for Clarification Regarding Relief from
Automatic Stay filed by Douglas C. Wigley on behalf of Gregory
Balensiefer.

(Doc no. 1615) Motion for Relief from Stay filed by Michael P.
Donaghy, Stephanie Donaghy.

(CC: Doc no. 1908, 1818) Motion for Relief from Stay filed by
M. Nawaz Raja, Neelum Nawaz Raja.

(CC: Doc# 1546) Motion of the Official Committee of Unsecured
Creditors for Entry of an Order Authorizing It to Prosecute and
Settle Certain Claims on Behalf of the Debtors' Estates.

Adversary proceeding: 12-01913-mg Wagner v. Residential Funding
Company, LLC, et al.:

(Doc no. 7,9) Motion for Dismissal of Adversary Proceeding
Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(5), and (6)
Or, in the Alternative, Permissive Abstention Pursuant to 28
U.S.C. Section 1334(c)(1).

1
2 Pre-trial Conference.

3
4 Adversary proceeding: 12-01896-mg Williams V. GMAC Mortgage LLC
5 (Successor by Merger to GMAC Mor)

6 Doc# 7 Motion for Dismissal of Adversary Proceeding Pursuant to
7 Bankruptcy Rule 7012(b)(5) and (b)(6) Or, in the Alternative,
8 Permissive Abstention Pursuant to 28 U.S.C. Section 1334(c)(1).

9
10 (CC: Doc no. 1858) First Interim Application of Towers Watson
11 Delaware Inc. as Human Resources Consultant for the Debtors for
12 Compensation and Reimbursement of Expenses Incurred for the
13 Period June 25, 2012 Through August 31, 2012 for Towers Watson
14 Delaware Inc., Consultant, period: 6/25/2012 to 8/31/2012, fee:
15 \$34,355.03, expenses: \$0:00. Filed by Towers Watson Delaware
16 Inc.

17
18 (CC: Doc# 1900) First Application for Interim Professional
19 Compensation First Interim Fee Application of Arthur J.
20 Gonzalez, as Chapter 11 Examiner, for Allowance of Compensation
21 and Reimbursement of Expenses for the Period July 3, 2012
22 through and Including August 31, 2012 for Arthur J. Gonzalez,
23 Examiner, Other Professional, period 7/3/2012 to 8/31/2012,
24 Fee: \$86,137.50, expenses: \$.00.

1
2 (CC: Doc no. 1850) Application for Interim Professional
3 Compensation for Severson & Werson, PC, Special Counsel.
4

5 (CC: Doc no. 2261) Application of the Examiner for Order
6 Authorizing the Retention and Employment of Wolf Haldenstein
7 Adler Freeman & Herz LLP as Conflicts Counsel to the Examiner
8 Nunc Pro Tunc to October 15, 2012 filed by Howard Seife on
9 behalf of Arthur J. Gonzalez, Examiner.
10

11 (CC: Doc no. 1794) First Interim Application of Rubenstein
12 Associates, Inc. as Corporate Communications Consultant for the
13 Debtors for Compensation and Reimbursement of Expenses Incurred
14 for the Period from May 14, 2012 through August 31, 2012 for
15 Rubenstein Associates, Inc., Consultant.
16

17 (CC: Doc 1859) First Interim Application of Kurtzman Carson
18 Consultants, LLC as Administrative Agent for the Debtors for
19 Compensation and Reimbursement of Expenses Incurred for the
20 Period May 14, 2012 through August 31, 2012, for Kurtzman
21 Carson Consultants LLC, Other Professional, period: 5/14/2012
22 to 8/31/2012, fee: \$94,074.00, expenses: \$0.00. Filed by
23 Kurtzman Carson Consultants LLC.
24
25

1
2 (CC: Doc# 1902) First Application for Interim Professional
3 Compensation of Deloitte & Touche LLP for Compensation for
4 Services Rendered and Reimbursement of Expenses as Independent
5 Auditor and Attest Service Provider to the Debtors for the
6 Period from May 14, 2012 through August 31, 2012 for Deloitte &
7 Touche LLP, Auditor, period: 5/14/2012 to 8/31/2012, fee:
8 \$690,583.50, expenses: \$0.00.

9
10 (CC: Doc# 1891) First Application for Interim Professional
11 compensation of KPMG LLP, as Tax Compliance Professionals and
12 Information Technology Advisors to the Debtors and Debtors in
13 Possession, for Interim Allowance and Compensation for
14 Professional Services Rendered and Reimbursement of Actual and
15 Necessary Expenses Incurred from May 14, 2012 through August
16 31, 2012 for KPMG LLP, Other Professional, period: 5/14/2012 to
17 8/31/2012, fee: \$656,390.00, expenses: \$46,449.02.

18
19 (CC: Doc# 1863) First Interim Application of Fortace LLC as
20 Consultant for the Debtors for Compensation and Reimbursement
21 of Expenses Incurred for the Period May 21, 2012 through August
22 31, 2012 for Fortace LLC, Consultant, period: 5/21/2012 to
23 8/31/2012, fee: \$337,939.00, expenses: \$119,073.93.

1
2 (CC: Doc# 1871) First Interim Application of Orrick, Herrington
3 & Sutcliffe LLP as Special Securitization Transactional and
4 Litigation Counsel for the Debtors for Compensation and
5 Reimbursement of Expenses Incurred for the Period May 14, 2012
6 through August 31, 2012 for Orrick, Herrington & Sutcliffe LLP,
7 Special Counsel, period: 5/14/2012 to 8/31/2012, fee:
8 \$733,357.07, expenses: \$678.12.

9
10 (CC: Doc no. 1872, 2301) First Interim Application of Dorsey &
11 Whitney LLP as Special Securitization and Investigatory Counsel
12 for the Debtors for Compensation and Reimbursement of Expenses
13 Incurred for the Period May 14, 2012 through August 31, 2012
14 for Dorsey and Whitney LLP, Special Counsel, period: 5/14/2012
15 to 8/31/2012, fee: \$412,188.83, expenses: \$5,105.22, filed by
16 Dorsey and Whitney, LLP.

17
18 (CC: Doc# 1882) First Interim Application of Bradley Arant
19 Boult Cummings LLP as Special Litigation and Compliance Counsel
20 for the Debtors for Compensation and Reimbursement of Expenses
21 Incurred for the Period May 14, 2012, through August 31, 2012,
22 for Bradley Arant Boult Cummings LLP, Special Counsel, period:
23 5/14/2012 to 8/31/2012, fee: \$4,207,515.65, expenses:
24 \$157,682.41.

25

1
2 (CC: Doc no. 1886) First Application for Interim Professional
3 Compensation for Locke Lord LLP, Special Counsel.
4

5 (CC: Doc# 1883) First Interim Application of Centerview
6 Partners LLC as Investment Banker for the Debtors for
7 Compensation and Reimbursement of Expenses Incurred for the
8 Period May 14, 2012 through August 31, 2012 for Centerview
9 Partners LLC, Other Professional, period: 5/14/2012 to
10 8/31/2012, fee: \$900,000.00, expenses \$18,761.48.
11

12 (CC: Doc# 1889) First Interim Application of Carpenter Lipps &
13 Leland LLP as Special Litigation Counsel for the Debtors for
14 Compensation and Reimbursement of Expenses Incurred for the
15 Period May 14, 2012 through August 31, 2012 for Carpenter Lipps
16 & Leland LLP, Special Counsel, period: 5/14/2012 to 8/31/2012,
17 fee: \$955,735.00, expenses: \$334,924.08.
18

19 (CC: Doc# 1888) Interim Application for Interim Professional
20 Compensation First Interim Application of Mercer (US) Inc. as
21 Compensation Consultants to the Debtors for the Period from May
22 14, 2012 through August 31, 2012, for Mercer (US) Inc., Other
23 Professional, period: 5/14/2012 to 8/31/2012, fee: \$43,618.92,
24 expenses: \$6,118.74.
25

(CC: Doc# 1890) First Interim Application of Curtis, Mallet-Prevost, Colt & Mosle LLP, as Conflicts Counsel to the Debtors and Debtors in Possession, for Allowance and Payment of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from May 14, 2012 through and Including August 31, 2012, for Curtis, Mallet-Prevost, Colt & Mosle LLP, Debtors' Attorney, period: 5/14/2012 to 8/31/2012, fee: \$496,548.50, expenses: \$3,093.40.

(CC: Doc no. 1895) Second Application for Interim Professional Compensation Second Interim Application of Reed Smith, LLP for an Award of Compensation and Reimbursement of Expenses for Services Rendered as an Ordinary Course Professional for the Debtors for the Period of August 1, 2012 through August 31, 2012, for Reed Smith LLP, Other Professional.

(CC: Doc no. 2272) Quarterly Application for Interim Professional Compensation and Reimbursement of Expenses for Services Rendered as an Ordinary Course Professional for the Debtors for Dykema Gossett PLLC, Other Professional, period 6/1/2012 to 8/31/2012, fee: \$85,772.60, expenses: \$2,192.49.

1
2 (CC: Doc no. 1894) First Application for Interim Professional
3 Compensation and Reimbursement of Expenses for Services
4 Rendered as an Ordinary Course Professional for the Debtors for
5 the Period of May 14, 2012 through August 31, 2012 for Troutman
6 Sanders, LLP, Other Professional.

7
8 (CC: Doc# 1897) First Interim Fee Application of Chadbourne &
9 Parke LLP, Counsel to the Examiner, for Allowance of
10 Compensation and Reimbursement of Expenses for the Period July
11 11, 2012 Through and Including August 31, 2012 for Chadbourne &
12 Parke LLP, Other Professional, period: 7/11/2012 to 8/31/2012,
13 fee: \$3,295,849.50, expenses: \$127,003.11.

14
15 (CC: Doc# 1905) First Application for Interim Professional
16 Compensation of FTI Consulting, Inc. as Financial Advisor for
17 the Debtors for Compensation and Reimbursement of Expenses of
18 Expenses Incurred for the Period May 14, 2012 through August
19 31, 2012 for FTI Consulting, Inc., Other Professional, period:
20 5/14/2012 to 8/31/2012, fee: \$7,500,000.00, expenses,
21 \$385,757.98.

1

2 (CC: Doc# 1904) First Application for Interim Professional
3 Compensation of Morrison Cohen LLP for Allowance of Interim
4 Compensation for Professional Services Rendered and Expenses
5 Incurred During the Period May 14, 2012 through August 31,
6 2012, for Morrison Cohen LLP, Other Professional, period:
7 5/14/2012 to 8/31/2012, fee: \$325,625.50, expenses: \$4,248.73.

8

9 (CC: Doc# 1885) First Interim Application of Morrison &
10 Foerster LLP as Bankruptcy Counsel for the Debtors for
11 Compensation and Reimbursement of Expenses Incurred for the
12 Period May 14, 2012 through August 31, 2012 for Morrison &
13 Foerster LLP, Debtors' Attorney, period: 5/14/2012 to
14 8/31/2012, fee: \$14,667,747.50, expenses: \$598,549.72.

15

16 (CC: Doc no. 2025) First Application for Interim Professional
17 Compensation for Prince Lobel Tye LLP, Other Professional.

18

19 (CC: Doc no. 1892) First Interim Application of Reed Smith LLP
20 for an Award of Compensation for Services Rendered as an
21 Ordinary Course Professional for the Debtors for the Period of
22 July 1, 2012 through July 31, 2012 for Reed Smith LLP, Other
23 Professional.

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2 (CC: Doc# 1884) First Interim Application of AlixPartners, LLP,
3 Financial Advisor to the Official Committee of Unsecured
4 Creditors, for Compensation and Reimbursement of Expenses for
5 the Period May 21, 2012 through August 31, 2012 for
6 AlixPartners LLP, Other Professional, period: 5/21/2012 to
7 8/31/2012, fee: \$2,205,724.75, expenses: \$34,011.46.

8
9 (CC: Doc# 1896) First Application of Kramer Levin Naftalis &
10 Frankel LLP, Counsel for the Official Committee of Unsecured
11 Creditors, for Interim Allowance of Compensation for
12 Professional Services Rendered and for Reimbursement of Actual
13 and Necessary Expenses Incurred from May 16, 2012 through
14 August 31, 2012 for Kramer Levin Naftalis & Frankel LLP,
15 Creditor Comm. Atty, period: 5/16/2012 to 8/31/2012, fee:
16 \$10,675,061.50, expenses: \$305,820.34.

17
18 (CC: Doc# 1898) First Interim Application of Moelis & Company
19 LLC for Compensation for Professional Services Rendered and
20 Reimbursement of Actual and Necessary Expenses Incurred as
21 Investment Banker to the Official Committee of Unsecured
22 Creditors for the Period from May 16, 2012 through August 31,
23 2012, for Moelis & Company LLC, Other Professional, period:
24 5/16/2012 to 8/31/2012, fee: \$1,391,129.03, expenses:
25 \$20,194.72.

1
2 (CC: Doc no. 1906) First Interim Fee Application of Mesirow
3 Financial Consulting, LLC for Compensation and Reimbursement of
4 Expenses as Financial Advisor to the Examiner for the Period
5 July 24, 2012 through August 31, 2012, for Mesirow Financial
6 Consulting, LLC, Other Professional, period: 7/24/2012 to
7 8/31/2012, fee: \$3,007,275.00, expenses: \$30,048.00 filed by
8 Mesirow Financial Consulting, LLC.

9
10 (CC: Doc# 2354) Debtors' Motion for Order Under 11 U.S.C.
11 105(a) and 365(a), Fed. R. Bankr. P. 6006 and 9014 and Local
12 Bankruptcy Rule 6006-1 Authorizing Assumption of Unexpired
13 Lease.

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19 ERIK FERGUSON, Residential Capital (TELEPHONICALLY)

20 DRAKE D. FOSTER, Kurtzman Carson Consultants

21 (TELEPHONICALLY)

22 PAMELA WEST, Residential Capital (TELEPHONICALLY)

RESIDENTIAL CAPITAL, LLC, ET AL.

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P R O C E E D I N G S

THE COURT: Please be seated. We're here in
Residential Capital, number 12-12020. Mr. Lee?

MR. LEE: Good morning, Your Honor. Gary Lee, from
Morrison & Foerster, for the debtors.

MR. RAJA: Good morning, Your Honor, Mohammad Nawaz
Raja and Mrs. Neelum Nawaz Raja, movants.

THE COURT: All right. Thank you. We're going to
proceed through with the agenda, and when a matter relating to
you comes, up, we'll call on you and give you an opportunity to
speak.

Go ahead, Mr. Lee.

MR. LEE: Your Honor, the first matter on the calendar
today, which is item number 1 of the scheduled matters, which
is docket number 2049, is the debtors' motion seeking
permission to reimburse AFI for a post-petition compensation
related to senior executives and granting them an
administrative expense claim for the payments, a limited
release for the consideration they're providing to the
employees, and then authorizing the debtors to fund an escrow
account for the payment of the admin expense claim.

Your Honor, during the first-day hearings, the debtors
received authority to reimburse AFI for compensation-related
payments, because they act as the debtors' payroll processor.
And at that time, Your Honor, what we didn't specifically

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 address were the peculiarities of the U.S. government's TARP
2 program, which caused both monetary limitations and deferrals
3 in the payment of executive compensation. And what those
4 deferrals mean is that a mechanism needs to be put in place to
5 account for post-petition compensation for 2012 that's deferred
6 through 2014; so in other words, compensation earned this year
7 that's deferred.

8 So the first component of the motion, Your Honor,
9 seeks approval of a mechanism that's been discussed and agreed
10 to between AFI, the committee, and the debtors. It has two
11 components. The first is the administrative expense component,
12 and the second is the funding of the escrow. Your Honor, no
13 party has objected to that portion of the relief, and so we
14 don't believe it's controversial.

15 The second component, Your Honor, relates to pre- as
16 opposed to post-petition compensation. And what the motion
17 does is resolve a dispute between the debtors and AFI as to
18 which party had the obligation to pay the debtors' employees
19 for pre-petition TARP-related compensation that fell due after
20 these cases were filed. So there are various employees who
21 have compensation due from 2008, '9, '10, '11, and through the
22 first half of 2012, before we filed the cases.

23 And under the agreement that was reached -- and I have
24 to thank the committee and AFI, because they really worked
25 through what were incredibly contentious and difficult

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1 issues -- AFI has committed to pay the outstanding pre-petition
2 compensation amounts to the debtors' employees, without seeking
3 any contribution or reimbursement from the debtors.

4 THE COURT: That was the change in language that was
5 added after the objections were filed to make it clear that
6 they wouldn't seek reimbursement of those amounts?

7 MR. LEE: That's correct, Your Honor. And the parties
8 also agreed on the form of what is a limited release as well.
9 And again, the committee and AFI were really integral in
10 resolving a motion that we filed in December, which ideally, we
11 would have filed back in May, which I think will indicate the
12 length and the quality of the argument that led to it.

13 So, Your Honor, again, no parties objected to that
14 relief. We've revised the form of order to take into account
15 the comments received from the committee, AFI, and from New
16 Jersey Carpenters. So as I said, Your Honor, at this point,
17 the debtors would request that the Court enter the order.

18 THE COURT: All right. As I understand it, all of the
19 objections -- and they were limited objections -- but the
20 objections that were filed -- I want to be sure I'm correct in
21 this -- have been resolved by revising the order to add
22 language that addresses the issues that were raised by the
23 objectors?

24 MR. LEE: That's my understanding, Your Honor. Yes.

25 THE COURT: Okay. Mr. Eckstein, do you want to be

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1 heard on behalf of the committee?

2 MR. ECKSTEIN: Your Honor, good morning. Kenneth
3 Eckstein of Kramer Levin, on behalf of the official creditors'
4 committee. Welcome back, Your Honor. I hope you had a --

5 THE COURT: Thank you.

6 MR. ECKSTEIN: -- pleasant time away.

7 Your Honor, as Mr. Lee noted, this has been a subject
8 that generated a lot of discussion over several months. And
9 the committee tried to look at it from several perspectives.
10 As Your Honor I'm sure appreciates, one of the issues that we
11 were concerned about from the outset was that there are
12 inherent conflicts that exist, given the fact that the debtors'
13 employees were being compensated with stock of the parent
14 company. And those conflicts exist. They continue to exist.
15 They're not being resolved as a result of this motion. And we
16 essentially tried to bracket that issue.

17 Ultimately, the committee did not try to overlay its
18 input into the amount of the pre-petition and base compensation
19 for the debtors' employees. And therefore, we tried to
20 structure this in a way that was neutral and protective of the
21 estates' interests.

22 THE COURT: May I ask you this, Mr. Eckstein? Does --
23 because they got a letter from OSM on November 30th, 2012.
24 Does that resolve the conflict issue?

25 MR. ECKSTEIN: Your Honor, the conflict issue is not

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1 resolved, because it exists and it can't be eliminated. Going
2 forward, we've made it clear that at least on a going-forward
3 basis, payment is going to be made in cash rather than in AFI
4 stock. But that doesn't change what essentially was the --

5 THE COURT: I mean, your conflict argument -- and I
6 understand it's not squarely presented here -- is that the
7 debtors' senior executives were dependent on the success of AFI
8 for a portion of their compensation, because it was in deferred
9 stock units. And now, going forward, it's no longer going to
10 be in deferred stock units, it's going to be in deferred cash
11 payments.

12 MR. ECKSTEIN: Going forward, that's correct.

13 THE COURT: Going forward.

14 MR. ECKSTEIN: Yes. Going forward, we think we've
15 dealt with that conflict going forward.

16 THE COURT: But isn't this resolved, I thought, with
17 the settlement and AFI's payment? How is this -- how does the
18 conflict issue still exist?

19 MR. ECKSTEIN: Your Honor, the point is, whatever
20 conflicts existed pre-petition, existed pre-petition, however,
21 it affected the conduct pre-petition.

22 THE COURT: Okay. That -- all right.

23 MR. ECKSTEIN: And that was the point we were making.

24 THE COURT: I understand.

25 MR. ECKSTEIN: And we're not resolving that today.

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1 THE COURT: All right.

2 MR. ECKSTEIN: And that was really tied to the fact
3 that we carved out from the release whatever --

4 THE COURT: Yes.

5 MR. ECKSTEIN: -- claims the estate has and how the
6 conflict implicates claims --

7 THE COURT: Okay.

8 MR. ECKSTEIN: -- and the relationship between the
9 executives and the --

10 THE COURT: I understand.

11 MR. ECKSTEIN: -- parent company are reserved.

12 THE COURT: Okay.

13 MR. ECKSTEIN: So I think that that issue, as I said,
14 is being set aside. The release, we think we have clarified
15 the release so that this is not inadvertently affecting
16 whatever claims are being reviewed by the examiner, by the
17 committee, or by others. And those are not being released
18 either.

19 THE COURT: And no third-party direct claims are being
20 affected by this?

21 MR. ECKSTEIN: And no third-party direct claims are
22 being affected. And also, as Mr. Lee indicated, AFI has
23 agreed, number one, to fund the amounts and not to seek
24 indemnification.

25 THE COURT: Approximately how much is involved in

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1 their funding?

2 MR. ECKSTEIN: I believe it's forty-five million or
3 fifty million.

4 THE COURT: All right.

5 MR. ECKSTEIN: Fifty-eight million, I'm sorry.

6 THE COURT: Fifty-eight million? Okay.

7 MR. ECKSTEIN: Fifty-three million pre, and I'm told,
8 nine post.

9 THE COURT: Okay, thank you.

10 MR. ECKSTEIN: So on that basis, Your Honor, the
11 committee is satisfied --

12 THE COURT: All right.

13 MR. ECKSTEIN: -- with the order to be entered. Thank
14 you.

15 THE COURT: All right. Thank you, Mr. Eckstein.
16 Anybody else wish to be heard?

17 Mr. Lee?

18 MR. LEE: Your Honor, I just wanted to address one
19 thing which relates to the dialog with the Office of the
20 Special Master. I mean, just to be absolutely clear, the
21 debtors began that process --

22 THE COURT: I know it's been ongoing.

23 MR. LEE: -- at the outset.

24 THE COURT: I know that.

25 MR. LEE: It is beyond anybody's expectation that we

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1 ultimately ended up with the letter that we ended up with.

2 THE COURT: Yes.

3 MR. LEE: Treasury rules are Treasury rules, Your
4 Honor. So --

5 THE COURT: Okay. Thank you.

6 MR. LEE: Thank you.

7 THE COURT: Well, this motion, which is the debtors'
8 motion for a supplemental order authorizing it to reimburse
9 Ally Financial, Inc. for payments made to the debtors'
10 employees, it's ECF number 2049, raises issues both under
11 Section 363(b)(1) and then also because it does incorporate a
12 settlement, it raises issues under 9019.

13 The Court has considered the motion under both. I'm
14 glad to see that the objections that had been filed have all
15 been resolved with changes to the language. The Court
16 concludes that the debtors have satisfied the business judgment
17 standard under Section 363(b)(1), and that the settlement that
18 is included within the agreement is in the best interests of
19 the debtor and the estate, and consequently, the motion is
20 granted.

21 MR. LEE: Thank you very much, Your Honor.

22 THE COURT: Thank you, Mr. Lee.

23 MR. LEE: The debtors' employees thank you too.

24 THE COURT: Okay.

25 MR. LEE: Your Honor, the next item on the agenda,

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1 sort of two items -- we filed two motions related to the plan
2 process. The first was a motion to extend the debtors'
3 exclusive period to file a Chapter 11 plan for seventy days.
4 And that's docket number 2355. The second was the motion to
5 appoint a mediator, which is docket number 2357. While the
6 motions are related, Your Honor, and parties filed joint
7 responses, and we filed a joint reply, they are not mutually
8 exclusive. And so, Your Honor, if I may, I'd like to address
9 them one-by-one, starting with exclusivity, which terminates
10 today.

11 Your Honor, I think we were fairly mindful of what you
12 said at the hearing when we were last here on the motion for
13 exclusivity. And what we've requested is what we think is a
14 fairly modest extension of seventy days. Indeed --

15 THE COURT: So it's February 28th that you've asked
16 for?

17 MR. LEE: That's correct, Your Honor.

18 THE COURT: For proposing a plan?

19 MR. LEE: That's correct, Your Honor. And then sixty
20 days to solicit votes, which takes us through to April the 29th
21 of next year.

22 Your Honor, since the first request for an extension
23 of exclusivity, I think we've done everything that we can to
24 make progress in the plan discussions. And I think both the
25 effort that we've made to make information available to

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1 people -- and we have made an enormous amount of information
2 available to people -- and the effort to actually move the
3 process forward, are really reflected in the responses that we
4 got to the motion to extend the exclusivity. We received five
5 responses in total: one from the creditors' committee, one
6 from the group represented by Ms. Patrick, one from Wilmington
7 Trust, one from AFI, and one from JSBs. And all of the
8 responses but one support the debtors' request for an
9 extension. Everybody agrees there should be an extension. I
10 think that the JSBs -- junior secured bondholders object only
11 to the length proposed by the debtors, as opposed to the action
12 of exclusivity being extended by a month.

13 Your Honor, I think we squarely satisfy the Adelpia
14 factors. We've shown both tremendous effort and progress. I
15 think that's acknowledged in the papers that were filed. And
16 we believe, Your Honor, that progress warrants the granting of
17 our request to extend the exclusivity. And during that time
18 period, Your Honor, we intend to keep up the pace. We intend
19 to engage in meaningful negotiations with the key parties.
20 And, Your Honor, we have set up a mediation process which I
21 think we'll discuss after we get through this motion.

22 Your Honor, I'd be happy to address the objection --
23 the one objection that we received to the length of our
24 requested exclusivity extension.

25 THE COURT: Well, let me hear from the objectors.

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1 MR. LEE: Okay.

2 THE COURT: And then I'll give you a chance --

3 MR. LEE: Thank you.

4 THE COURT: -- to reply if necessary.

5 Mr. Eckstein, do you want to be heard first? You
6 support the motion, but let me hear from you first.

7 MR. ECKSTEIN: Your Honor, with respect to
8 exclusivity, the committee does support the relief requested.
9 And while I'll reserve my remarks on some of the process when
10 we get to the mediation discussion, I think that consistent
11 with the recent developments in the case, including the
12 agreement to adjourn the RMBS trial until March and the
13 discussions that have been taking place and will be taking
14 place over the next several weeks, we in fact think that an
15 extension of exclusivity is constructive. And the committee
16 does support it.

17 We had made the point in our pleading that our
18 understanding is that there is no intention to file a plan
19 during this time period, but rather to use the period for
20 negotiations. And obviously, at the end of the period, the
21 debtor will reserve the right to further extend for cause,
22 which we think is the appropriate way to proceed. And on that
23 basis, we would support the extension requested by the debtor.

24 THE COURT: All right, thank you.

25 All right, anybody else wish to be heard on the issue

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1 of extension of exclusivity?

2 MR. WOFFORD: Your Honor, for the record, Keith
3 Wofford from Ropes & Gray on behalf of the RMBS steering group.
4 As you note from our objection, it is not per se an objection
5 to exclusivity, but it is expressed out of concern for making
6 sure that the mediation and exclusivity extension interact
7 properly, and that we would prefer not to have to be back here
8 in February arguing about a further extension, when if
9 mediation is granted, we'd be in the middle of a mediation.

10 Further, we don't want the extension framework to
11 preordain a further adjournment of the RMBS settlement hearing.
12 That is, we'd like to have a mediation with a defined term,
13 which we'll talk about next, particularly a defined ending, so
14 that if, in fact, mediation is successful, there can be a plan
15 proposed with an existing exclusivity; and if it's
16 unsuccessful, parties can assess their options and we can go
17 forward with the RMBS trial.

18 THE COURT: Thank you, Mr. Wofford. Anybody else wish
19 to be heard?

20 MR. SHORE: Good morning, Your Honor. Chris Shore
21 from White & Case on behalf of the junior secured bonds.

22 We also don't object to an extension of exclusivity.
23 The question is really one of how long the extension should be.
24 And we are objecting to one beyond January 31st, which is the
25 contemplated close of the MSR and HFS --

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1 THE COURT: Seems like almost tomorrow, though, I
2 mean, it's --

3 MR. SHORE: It does. But let me focus on one thing
4 and why we're asking for a shorter extension. We're at an
5 inflection point in the case with the sales closing. And we're
6 rapidly approaching estates that are essentially going to be
7 estates that hold bank accounts and hold causes of action. And
8 the issues that have to be addressed in the context of that are
9 going to be how to allocate those assets between the various
10 debtor boxes. Again, we've got the contemplate -- or the
11 complex capital structure here. And how and where to place
12 those is a key issue. In fact, the junior secured bonds and
13 Ally are the only creditors in many of those boxes. So today,
14 the debtors, in those boxes, are proposing an extension of
15 exclusivity over the objection of their main creditor
16 constituency.

17 The next is, once you put the assets in the boxes, the
18 question is, how does that get reallocated with either inter-
19 debtor claims or inter-debtor causes of action; which is going
20 to raise some potentially difficult problems in the context of
21 settlement negotiations and plan proposals. Then, within each
22 individual box, you have to just address the issue of the
23 priority of the claims; the challenges to the extent of our
24 liens; the allowance of claims of particular boxes with the
25 RMBS trusts and others; the potential subordination of claims

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1 within those boxes. And then finally, the issue of do we
2 monetize the litigation claims now. Ally said it's happy to
3 settle, happy to litigate. And we'll have to figure out how to
4 do that.

5 In the context of where we are now, we know the --
6 we've been talking to people -- the professionals know what the
7 issues are. The professionals know what the toggles are in
8 that four-step process.

9 The only issue up right now -- and it's both in
10 connection with exclusivity and with the mediator -- is do we
11 litigate now or do we try to get a plan done? I think
12 everybody is saying let's have a good and maybe first shot at
13 trying to resolve these issues globally in a plan. But the
14 question today is, how should that be done and who should do
15 it?

16 And our view is that's unclear right now as to how it
17 should be done and who should be doing it. So what we want to
18 do at this point is maintain maximum flexibility and not use
19 the process of either appointing a mediator, dealing with
20 exclusivity, or -- you're going to see we've reached a
21 resolution -- but in the context of the committee getting
22 standing, to have any of that impact the ability to maintain
23 flexibility as to paths.

24 It may be that if Ally doesn't want a third-party
25 release, and we'll know -- this is not a difficult negotiation;

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1 it's occurred once before that led to our pre-petition
2 settlement. And there's either going to be some movement there
3 or there isn't. It may be that Chapter 7 is best path. If we
4 don't need third-party releases, we're just liquidating cash
5 and causes of action. So we don't want the process, right now,
6 of appointing the mediator, dealing with committee standing,
7 dealing with an extension of exclusivity, to impact that.

8 And fundamentally, when we get to that question of
9 which path do we take, it's our view in the context of trying
10 to resolve plans globally, that keeping people on a shorter
11 time frame is better than this concept of well, we want it out
12 to the 28th, but we're not going to file a plan in that period,
13 so we're just going to keep coming back for more.

14 THE COURT: You know, I think the one thing that
15 clearly, I think, got across, when the issue of extending
16 exclusivity came up for the first time, was that I was not
17 particularly satisfied with the direction the case was going,
18 and consequently I set a shorter time than anybody wanted,
19 namely today. I think that message got across. And while
20 there's an enormous amount that needs to be done, if there's
21 going to be a consensual plan achieved, I do think that there's
22 been progress in the sense of dialog, sharing of information.

23 I have your point, Mr. Shore, about -- I'm not sure I
24 quite agree that you're right, at this moment, what you refer
25 to as the inflection point. But everyone is really going to

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1 have to decide over the next several months, whether you're
2 going to embark on the litigation wars or whether people are
3 going to come together and try and reach a consensual agreement
4 on a lot of very complicated issues. So I have your point.

5 MR. SHORE: We're -- and let me just conclude with
6 this, then. We have a concern that we're losing sight of
7 exactly what settlement needs to occur. What we need now is
8 informed principals and principal-to-principal discussions
9 going on. The committee isn't going to vote on a plan. The
10 debtors may vote. They may not have their votes counted. The
11 mediator isn't going to vote on a plan.

12 We have to, if we're going to get to a plan
13 settlement, get the principals educated. This does not -- I
14 mean, we can deal with it in the context of the terms of a
15 mediation -- the notion that there's not been public disclosure
16 right now of the trial balances as of the petition date -- how
17 can you have a meaningful discussion about a secured claim
18 without having trial balances as of the petition date, to set
19 at least the basis for a discussion on what is the amount of
20 collateral as of the petition date?

21 But that's got to take place. What's happening today,
22 and our concern, and the reason we want to keep it short to
23 make sure this isn't happening, is that the people who aren't
24 voting are looking for ongoing relevance in the cases. There's
25 certainly a role for the debtors to facilitate the discussions

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1 and for the committee to facilitate the discussions. They
2 can't get involved in the inter-company disputes, the inter-
3 debtor disputes.

4 THE COURT: Okay. I --

5 MR. SHORE: They can facilitate. So as long as what's
6 we're doing is -- the extension of exclusivity is premised upon
7 real discussions taking place between the economic
8 stakeholders, the people who are going to be voting on the
9 plan, it really doesn't make sense to continue down this path
10 of seeing who can insert themselves in the process, who
11 ultimately isn't going to have a vote tabulated.

12 THE COURT: All right. Thank you, Mr. Shore. Anybody
13 else wish to be heard? Is there anybody else who wants to be
14 heard? No?

15 Okay. All right. With respect to the debtors' motion
16 to extend exclusivity to propose a plan by February 28th and
17 solicit votes by April 29th, the motion is granted. In the
18 Court's view, the debtor has satisfied all of the prongs of the
19 Adelpia test which I've typically followed in this case,
20 earlier, and in other cases as well.

21 There is a lot to be done. I certainly remember when
22 this case was first filed and I read in the press that this was
23 a pre-pack. Well, it's about as far as one can get from that.
24 It is extremely complicated, because of the number of debtors,
25 the capital structure, the different creditor constituencies.

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1 If there's going to be a consensual plan, there's going to need
2 to be hard negotiations, compromise, and agreement.

3 The alternative is close to nuclear war. A lot of
4 deep pockets and high stakes. So everyone's going to have to
5 come to the recognition of how can they achieve the best result
6 for everybody in the shortest amount of time. I think that's
7 likely to be through negotiation. Certainly the debtor
8 reserves its right to seek a further extension to exclusivity.

9 When the first motion for extension of exclusivity
10 came on, I made clear that there had to be a dialog, there had
11 to be negotiations, there had to be sharing of necessary
12 information. And I think in that regard, there's certainly
13 been substantial progress. We'll deal with the mediator motion
14 next. But I mean, I anticipate that a process will be -- if
15 it's not already in place, it'll be put in place very quickly
16 and move forward very quickly. There's going to have to be a
17 lot of hard negotiation and sharing of information.

18 So with respect to the extension of exclusivity, the
19 motion is granted.

20 MR. LEE: Thank you, Your Honor. Your Honor, the next
21 item on the agenda is docket number 2357, which is our motion
22 for the appointment of a mediator. Your Honor, I believe there
23 is, in fact, universal consensus that a mediator is necessary
24 to help move the plan process forward. And there's also
25 consensus from the responses that were filed that the mediator

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1 would ideally be a sitting bankruptcy judge from the Southern
2 District of New York.

3 Where the parties appear to diverge, maybe more as
4 matter of nuance in process, are the scope of the mediation and
5 the timing and duration of mediation. And perhaps, if I could
6 address both of those two at a time?

7 THE COURT: Go ahead.

8 MR. LEE: Okay. So with respect to the scope, I don't
9 believe that any party who responded to our motion opposes
10 mediation with respect to what I'll call the AFI issues, which
11 is complex as they are. I think Your Honor, knows that an
12 extraordinary number of man hours have gone into understanding
13 the AFI issues, investigating the AFI issues, taking discovery
14 on those issues. And because of all of that work, Your Honor,
15 we believe that the issue is quite clearly ripe for mediation.

16 The committee, in its response, made clear to the
17 debtors and has made clear to us on a number of occasions, that
18 it would like a small window of opportunity to have informal
19 negotiations with AFI, and I'll allow the committee and AFI to
20 discuss what they think of that. It is the debtors'
21 understanding from the papers filed by the committee that
22 they've scheduled two meetings in the first part of January to
23 discuss these issues. And we're supportive of that effort.

24 But I'm mindful of what Mr. Shore said and mindful of
25 what other people have said, which is that we want to, and we

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1 really need to, use the next two months of exclusivity as
2 productively as possible. What I don't want to have happen,
3 and I'm sure that Your Honor doesn't, is for a number of
4 informal discussions to take place where people stare at the
5 walls and effectively just create a recipe for further delay;
6 and then I come back here in March, Your Honor, and I say,
7 well, people have met. They've had negotiations.

8 And so rather than lose what I think could be the
9 entire month of January, we think it's important, if Your Honor
10 is inclined to grant our motion, to have the mediator educated
11 on the AFI related issues now, so that if and when -- or if or
12 when these discussions don't go anyway, the mediator can jump
13 in and effectively force some discipline on the process.

14 THE COURT: Yes, I've made this point before, really
15 at the time of the first exclusivity motion. It seemed like
16 everybody wanted to sit and wait for the examiner report, and I
17 made clear that this case was not going to be stopped while we
18 wait for the examiner to do the report. And we know that the
19 time for the examiner's report has been extended out.

20 I would just reiterate again, there is no reason -- I
21 mean, I think from some of the things I've read, the parties
22 seem to have clearly identified the issues that are going to
23 have to be resolved. That's certainly a first step, to know
24 what the issues will be. And you need to move forward with it.
25 I'm not necessarily saying that there'll be -- maybe there will

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1 be a resolution before we have the examiner's report. But
2 let's assume not. This has to move forward. I don't think
3 you're saying anything differently than that, Mr. Lee.

4 MR. LEE: No, Your Honor. And in fact, what I wanted
5 to make certain of is that if informal discussions between
6 principals and parties don't make material progress in the
7 first part of January, that the parties really don't have a
8 choice at that point in time. Mediation will start. Mediation
9 will continue. And the mediator will ensure that the parties
10 narrow their differences. And so that when we come back to you
11 in January, everybody has given it the time and attention that
12 it requires. And either the mediation will be unsuccessful but
13 the effort will have been made in a disciplined way, which is
14 what a sitting bankruptcy judge in this district will
15 absolutely require.

16 THE COURT: Okay. Let me hear from others, all right?

17 MR. LEE: Okay. All right. Your Honor --

18 THE COURT: Go ahead.

19 MR. LEE: -- sorry. Just one additional point that I
20 wanted to make in relation to the mediation and the scope.
21 Really, Your Honor, I think as Your Honor has been -- is more
22 than well aware, the RMBS trial has used up a lot of this
23 Court's time and the parties' time as well. And we did adjourn
24 that specifically to March the 18th to facilitate these
25 negotiations.

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1 But to be clear, the parties have done an enormous
2 amount of work on that issue. We all know everything there is
3 to know about each others' positions. And that's not just in
4 relation to the RMBS aspect, but the entire waterfront of the
5 PLS claims. And Your Honor will have seen that the
6 securities -- a class of securities claimants in the PLS have
7 filed a motion for plan treatment. The monolines, obviously,
8 have been very actively involved in this process. There's a
9 question as to whether their claims are or aren't subsumed
10 within the RMBS. And it seems to us, Your Honor, and this
11 point, I think is made in lots of the papers, but it was one of
12 the bases for moving the trial to March. If there's an issue
13 that's crying out to get resolved so that we don't have to have
14 a hearing in March, that's got to be it.

15 THE COURT: All right, thank you. Mr. Eckstein, do
16 you want to be heard?

17 MR. ECKSTEIN: Your Honor, thank you. Kenneth
18 Eckstein on behalf of the creditors' committee. While I'm
19 pleased to see that -- I don't think, at this point, we have
20 major disagreements. I think, if Your Honor would permit me
21 just a few comments on where we see the case right now and how
22 we think it makes best sense to proceed.

23 Your Honor, I'm not sure I would say that the case is
24 at an inflection point, but I think the case is at a very
25 advanced stage right now, where I believe it's fair to say that

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1 for a variety of reasons, there is a great deal of recognition
2 on the part of all parties in the case, as far as we can
3 observe, that people need to act dynamically and quickly. And
4 we think that's positive. And as Your Honor knows, in
5 connection with the overall agreement by the debtor to adjourn
6 the RMBS trial by sixty days, the committee concluded that it
7 was in the best interests of the case to put a mediator in
8 place, because the feeling was that the presence of a mediator
9 would provide further motivation for the parties to exercise
10 self-help, and would also give the parties a recognition that
11 there's a structure in place to help resolve issues, if it
12 become clear that there are issues that aren't resolvable on
13 their own or that need outside encouragement.

14 Mr. Lee correctly points out that at least from the
15 committee's perspective, there is, I think, a strong incentive
16 right now to make as much effort as possible during the first
17 several weeks of 2013, to see whether or not real structure can
18 be put into this case that can provide the basis for a global
19 resolution. And there are two things that are basically going
20 to take place.

21 Number one, the unsecured creditor constituencies, who
22 ultimately reside within the committee, but are all individual
23 creditors who hold their own claims and assert third-party
24 claims as well, have been in extensive dialog, and have
25 committed to continue extensive dialog during the early part of

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1 January. And there are meetings that have been scheduled, and
2 there is a formal agenda of work that parties have committed
3 to. And to note a point that Mr. Shore made, I think the
4 committee agrees with the fact that it is imperative for
5 principals to be actively involved. And to the extent
6 principals may not be within the committee, we're trying to put
7 a structure in place through appropriate confidentiality
8 agreements to make sure that principals are going to be able to
9 have an appropriate exchange over the substance that needs to
10 be discussed surrounding a plan.

11 Number two, the committee has made extensive efforts
12 to grapple as quickly as possible with its review of potential
13 claims against AFI. And as we said from the outset of the
14 case, we felt that this was an important investigation that
15 needs to be done. The committee has been working closely with
16 the examiner, but on its own, has done a great deal of work.
17 And toward that end, as Mr. Lee indicated, while I don't want
18 to get ahead of ourselves by any means, the fact of the matter
19 is that we have been able to open up, I think, a constructive
20 dialog with the representatives of AFI about a process that
21 would allow us, in the near term, I think, to get real clarity
22 as to whether or not this case can or can't be the subject of a
23 negotiated plan.

24 And toward that end, in fact, two meetings have been
25 set up with the committee and its members and AFI, during the

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1 early part of January, to begin to substantively discuss the
2 potential claims against AFI and the defenses to those claims,
3 which both the committee and AFI, I think, have acknowledged,
4 is an appropriate predicate for substantive business
5 negotiations. And we have that scheduled.

6 I don't want to minimize the difficulty of even
7 scheduling meetings. But they have been scheduled. And that's
8 constructive. And we do not think that January is going to be
9 a waste. I can't assure that there's going to be an agreement,
10 but it's not going to be a waste.

11 And ideally, there is going to be significant progress
12 made by the creditor constituencies about potential ways for
13 resolving significant disputes in the context of a plan, and
14 ideally, there'll be progress made with AFI. That either leads
15 to an agreement or starts to narrow the issues.

16 And in the view of the committee, Your Honor, I think
17 that by the end of January I think we'll have a great deal of
18 clarity about whether or not progress is being made and what
19 issues, in fact, would benefit from mediation. And at that
20 point in time, I think we can make an intelligent, informed
21 judgment about whether or not we should begin the mediation and
22 what issues should be presented to the mediator for initial
23 focus.

24 THE COURT: Here's where I think I disagree with you,
25 Mr. Eckstein. Mediation can accomplish at least two things.

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1 One, once the respective parties have sort of set out their
2 bargaining positions, a mediator can be effective in helping to
3 close a gap and see if an agreement can be reached. But I also
4 think that in a case like this, with really great complexity
5 and a lot of moving pieces, a mediator can be very important in
6 making sure that the steps in the process are clearly set out
7 in how they're going to move forward.

8 That would certainly -- I would certainly encourage
9 the committee to meet with AFI as soon as possible in January
10 to try and make progress, see whether you can make progress
11 with respect to your issues. But I think an effective
12 mediator -- you're representing one constituency. There are
13 many other constituencies. I think we don't have to await the
14 outcome of your efforts with AFI to try and put together all
15 the pieces of this process.

16 So I mean I won't hide the ball on anybody. What
17 I'm -- I want to hear anyone else who wants to be heard on the
18 mediator issue. But I would certainly contemplate appointing a
19 mediator promptly, requiring all parties, not necessarily
20 together, but in early January, right after New Year, to meet
21 with the mediator to make sure that there's some common
22 understanding about how the process -- and maybe multiple
23 processes in the beginning are going to move forward. And it
24 may be that the step 2 of the mediation, which is once the bid
25 and ask of respective positions are there, the mediator can be

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1 very helpful in trying to close that gap.

2 When the first exclusivity motion came on and I gave
3 the debtors until today, one of the things I directed was that
4 the debtors meet with you to try and begin to put a process
5 together. And I think that's happened. Dialog did start. No
6 agreements, but at least it got everything moving. And I want
7 to be sure that beginning in early January that there is a
8 common understanding about how all of these steps are going to
9 move forward, over what time period. The mediator will direct
10 what information ought to be shared, to the extent it's not
11 being voluntarily shared. The mediator can direct time frames
12 in which things should be done.

13 So that may be where I part with you. In reading the
14 papers, I see some of the people -- some of the responses were,
15 well, the mediation shouldn't start until the end of January.
16 That's where I think I disagree. I guess it depends on what
17 you mean by mediation. I think that putting together how this
18 is going to move forward is important. I'll stop there.

19 MR. ECKSTEIN: Your Honor, I'm not sure that there's a
20 significant difference in what Your Honor is saying from the
21 way we are looking at it. And to the extent the mediator can
22 be helpful in making sure that the process is going to move
23 forward, I think that may be instructive. And exactly when we
24 drill down into particular issues, may be a second step. So --

25 THE COURT: Okay.

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1 MR. ECKSTEIN: -- guess with that, Your Honor, I think
2 we're prepared to proceed, and hopefully, in fact, make as much
3 progress as we possibly can over the near term.

4 THE COURT: Thank you, Mr. Eckstein. Let me hear from
5 anyone else who wants to be heard. Mr. Moloney?

6 MR. MOLONEY: Tom Moloney on behalf of Wilmington
7 Trust. Just very briefly, we very strongly endorse the
8 approach that Your Honor has outlined. Thank you.

9 THE COURT: Thank you. Anyone else wish to be heard?
10 Mr. Wofford?

11 MR. WOFFORD: Your Honor, we agree that the mediation
12 should have a prompt start, but also we would like if it would
13 be clear that there is, at least initially, a firm intended
14 ending date for that mediation. Because without a deadline,
15 with this large and diverse group, we think attorneys and
16 clients may be reluctant to move forward, and we don't want to
17 get in the way of rolling stated deadlines if we can avoid it.

18 THE COURT: Mr. Wofford, I'm more inclined -- assuming
19 that it's a sitting bankruptcy judge who's appointed as the
20 mediator, I have pretty complete confidence that the process
21 will move forward or it will end, and will not have a very
22 uncertain future. Let's put it that way.

23 MR. WOFFORD: Well --

24 THE COURT: I mean, I think it is important that it
25 move forward. I'm not so sure about setting an artificial

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1 deadline now. I would have confidence, if it's one of my
2 colleagues, for example, that they will make sure it's kept to
3 a tight schedule.

4 MR. WOFFORD: Well, you know, for the record, Your
5 Honor, we're aware that the Court is mindful of this, but we
6 are sensitive that delay is very, very costly. And given that
7 we have a limited pool of assets --

8 THE COURT: Well, we're going to get to fee apps, and
9 I have clearly in mind what the expense of this case is. And
10 so the sooner there can be a resolution, the sooner that can be
11 put to an end.

12 MR. WOFFORD: Right. So, again, for the record, we
13 would like it to be clear that there is an incentive for people
14 to, if there's going to be a settlement, to get on board; that
15 people understand that the train on a consensual resolution, if
16 there's going to be one, is going to be leaving the station.
17 And frankly, we think that will help the estates realize on
18 the -- to the extent the Ally potential litigations are an
19 asset, that we, as a group of creditors, have some consensus
20 that may help us effectively realize upon that asset and
21 resolve those issues as well.

22 THE COURT: Thank you, Mr. Wofford. Anyone else?
23 Mr. Siegel?

24 MR. SIEGEL: Your Honor, we're very comfortable --

25 THE COURT: Just make your appearance.

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1 MR. SIEGEL: I'm sorry. Glenn Siegel, Dechert LLP, on
2 behalf of Bank of New York Mellon. We're one of the RMBS
3 trustees. As I've said before, unless one of my colleagues
4 gets up and disagrees, you should assume that we are speaking
5 generally for all the RMBS trustees, and we've been
6 collaborating on this.

7 We think that this is a very useful approach. Just to
8 reiterate -- and I think that having the mediator in place will
9 be helpful in this process. It's been our intention to
10 commence discussions beginning early next month. Having the
11 mediator there and laying out our plan to the mediator, I
12 think, will help us stay on schedule. I think this is group of
13 cats that needs to be herded, and I hope the mediator can do
14 that.

15 And one of the benefits here is to kind of let
16 everybody else catch up in figuring out their own issues. Now
17 that we, I think, have fully vetted the RMBS issues, we need to
18 fully vet the AFI issues and we need to fully vet all the other
19 issues between creditors. We think this is useful in getting
20 there.

21 THE COURT: Thank you, Mr. Siegel.

22 MR. KIRPALANI: Good morning, Your Honor. Susheel
23 Kirpalani of Quinn Emanuel.

24 THE COURT: Good morning.

25 MR. KIRPALANI: I'm here on behalf of the

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1 institutional investors that I believe the debtors' counsel
2 referred to. It's AIG, Allstate, Prudential, and Mass Mutual.
3 And collectively, our clients hold, we believe, in excess of
4 1.75 billion dollars of claims -- fraud claims against the
5 debtors and the debtors' parent.

6 And we did file a response that supported the
7 mediation. The only thing I wanted to point out. I know Your
8 Honor does not rubber stamp, typically, proposed orders. And
9 you often take the pen and put down exactly what you mean and
10 what you order. And that the actual proposed order has a
11 phrase, a defined term, "the mediation parties". But what it
12 says is, the definition is "the relevant parties involved in
13 the mediation", and it seems a bit circular to me.

14 We have talked to the committee and we've talked to
15 the debtors. And in fact, I learned of the mediation prospect
16 from counsel to Ally. And I think all of those parties do
17 believe and encourage the institutional investors in
18 participating, because it would be helpful.

19 We did file -- first in the beginning of the case, we
20 were stayed or we agreed through tolling agreements not to sue
21 Ally Financial, to let the case get to a proper start and not
22 be haphazard about it. And those stays or tollings are still
23 in place. And we did file a motion for classification. And at
24 various parties' requests, we agreed to adjourn that to March,
25 because we're not here to really get in the way of progress.

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1 But we do think it's important that we be included in the
2 mediation, because it can facilitate progress, and we've been
3 interested to talk to folks, and we've been trying through --
4 two of these clients are sitting in the creditors' committee --
5 we've been trying through those means, and we've met with the
6 examiner.

7 But I just want to make sure that the order providing
8 for mediation is clear as to --

9 THE COURT: Well --

10 MR. KIRPALANI: -- who's participating.

11 THE COURT: -- Mr. Kirpalani, I'll tell you right now,
12 what I'm inclined to do is -- assuming I grant the motion -- is
13 grant a motion without narrowly defining the scope of the
14 mediation, but to require either submissions to the mediator or
15 meeting -- face-to-face meeting with the mediator in early
16 January, and have the terms of the mediation more clearly
17 defined then, with the guidance of the mediator, if it's one of
18 my colleagues.

19 This is not -- I'm not sending this off -- we have
20 some very fine mediators on the register of mediators in the
21 court. But if it goes to one of my colleagues, I think I'm
22 more inclined not to have a detailed order now, and then have
23 people argue whether it should be broader or narrower, but have
24 those parties who want to be heard about the scope of the
25 mediation talking to the mediator about that; one of my

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1 colleagues, in defining the order. So that's what I'm more
2 inclined to do, Mr. Kirpalani.

3 MR. KIRPALANI: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. KIRPALANI: I mean, obviously you're the one
6 that's going to enter the order. And as long as the debtors
7 and the committee and Ally continue to encourage our
8 participation --

9 THE COURT: They may object to you --

10 MR. KIRPALANI: -- I'm sure --

11 THE COURT: -- Mr. Kirpalani, but you know, we'll just
12 see.

13 MR. KIRPALANI: That would be bizarre twist.

14 THE COURT: It won't be personal, but, you know.

15 MR. KIRPALANI: It will be a turn. I don't care about
16 the personal part. But it would be kind of a twist to ask us
17 to defer, to defer, to defer, and then say, but you know, you
18 really shouldn't participate now. Because then we will not be
19 continuing to defer on those matters. That's all I'd just
20 point out, Your Honor.

21 THE COURT: Okay. Thank you very much.

22 MR. KIRPALANI: Thank you.

23 THE COURT: Anybody else wish to be heard? Mr. Shore?

24 MR. SHORE: Thank you, Your Honor. Let me make one
25 clarification, and then one request. The clarification, I

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1 think it was said, that everybody agrees that a mediator makes
2 sense. We don't agree that a mediator makes sense for the
3 following reason. There's an asset that exists right now,
4 which is the willingness of the principals to do a deal that
5 makes no sense to a mediator.

6 The problem with putting a mediator in place before
7 everybody's gotten in the room, is that it sets people's
8 expectations, and people start deferring to the mediator as to
9 the appropriate way in which to settle, or what kind of deals
10 make sense. That can be fixed by an artful mediator, so that
11 expectations aren't set, and there is a period of time for
12 people to try to do that.

13 Our concern is, by putting a mediator in place,
14 everyone's going to sit back and start waiting to -- for input
15 from the mediator as to the strengths and weaknesses of their
16 position. And it makes a deal harder. That was our view.
17 This is pretty quick for a debtor to pull the trigger on we
18 need a plan mediator. In the context of where plan mediators
19 get appointed, it's after a substantial period of time has gone
20 on where the principals -- educated principals have met, and
21 they've been unable to reach resolution, because they've just
22 hardened their position around a legal or factual issue.
23 That's just our view.

24 With respect to -- and it sounds like the boat is
25 sailing on a mediator -- to the extent there is a mediator,

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1 there's going to be a lot of detail that needs to be filled in
2 at the -- by the mediator, with the assistance of the court,
3 around two principles that are very important to us. One is
4 that principals get educated. There has to be, in order for a
5 successful mediation to occur, information flow.

6 And this is not -- I think there were some
7 misstatements made in the reply -- we don't object to a
8 confidential mediation. People's articulation of their legal
9 positions in a mediation should not be used in the context of
10 litigation. But the underlying facts aren't privileged in a
11 mediation. So to the extent that the debtors have information
12 which is relevant to the resolution of the dispute, they need
13 to get that information out there.

14 THE COURT: Mr. Shore, let me say this. I don't
15 disagree with anything you've said so far. With respect to
16 information sharing, if any party is resisting sharing
17 information, particularly one of my colleagues, they just have
18 the ability to order it. Okay.

19 Meaningful settlement negotiations require a level
20 playing field, that people have the information they need to be
21 able to formulate their positions and move forward and
22 hopefully compromise. And so, that's one of the reasons, Mr.
23 Shore, that I think it's important to get a mediator in place
24 and started sooner rather than later, so that -- call it
25 preliminary issues about information -- if you're saying you're

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1 not getting the information you need, you'll, in the first
2 instance -- and I don't want to get into a debate, Mr. Lee,
3 because I know you're going to say you're giving him what he
4 wants and all that -- we don't have to get into -- I'm not
5 taking a position about it at all.

6 But if your position is you're not getting what you
7 need, if a mediator is in place, you'll tell him or her -- him
8 or her. And you'll tell him, and if it's appropriate, you'll
9 get the information and move forward. So that's one of the
10 reasons I think it's important to get the process started
11 sooner rather than later. I don't want to wait till the end of
12 January and then have you or someone else raise the issue,
13 well, we're not in a position to even formulate our position,
14 because we'd never gotten this information we need.

15 MR. SHORE: The other concept that needs to be built
16 into a subsequent order is going to be around encouraging
17 principals to participate. And that deals with, to some
18 extent, confidentiality issues. Every piece of paper that is
19 going to be negotiated in the context here is going to be held
20 by people who are sensitive to having MNPI of the debtors or
21 whatnot.

22 In addition, the very process of participating in a
23 plan negotiation leads to, in some cases, extremely adverse
24 consequences. The debtors, I think, cited WaMu, but then
25 didn't really discuss the fact that what ended up happening in

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1 that case was that people who elected to participate in the
2 mediation had some very unintended consequences about their
3 participation.

4 So when we get to the stage about the ground rules for
5 participation, it's our view that they should be written in a
6 manner to get as many people as possible into the room and
7 address as many legitimate concerns of people with respect to
8 inadvertently restricting themselves or otherwise putting
9 themselves in a position where they can't assess what to do,
10 because they've been tainted with information.

11 So clearly there's going to need to be some kind of,
12 in the first instance, hard look at what really is confidential
13 versus what the debtors don't want to publish; and two, to the
14 extent that information is confidential, how we go about
15 setting up procedures for making sure that there is public
16 disclosure at an appropriate time.

17 THE COURT: Thank you.

18 MR. SHORE: You're welcome.

19 THE COURT: Anybody else? Anybody on the phone wish
20 to be heard?

21 All right, Mr. Lee?

22 MR. LEE: Your Honor, I've very much acutely alive to
23 the confidentiality issue. I take almost complete exception to
24 the level playing field and the quality of information, as you
25 can imagine.

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1 THE COURT: I suspected you would, but --

2 MR. LEE: I actually even managed to have a
3 spreadsheet put together of every point of contact with the
4 junior secured bondholders' advisors. So if the day comes, I
5 have it in hand.

6 I just want to make one point clear. Your Honor, the
7 parties are going to discuss confidentiality. So I accept that
8 the form of the order as it currently stands clearly doesn't
9 address the confidentiality concerns. But I would like to make
10 one --

11 THE COURT: Do you have a copy of -- in this mound of
12 paper I have here -- let me see your form of order.

13 MR. LEE: May I approach?

14 THE COURT: Yes.

15 (Pause)

16 THE COURT: All right. Go ahead, Mr. Lee.

17 MR. LEE: Your Honor, what underpins a lot of these
18 discussions are the trial balances and the waterfall that
19 effectively is created out of looking at fifty-seven separate
20 debtors. And the difficulty we have is that the waterfall is
21 based on assumptions. And they're like actuarial projections.
22 They're absolutely bound to be wrong, and they're entirely
23 subjective. And what the debtor does not want to be exposed to
24 is a situation in which it's required to publish information
25 publicly, upon which investors rely upon -- material non-public

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1 information that's inherently inaccurate. It's also unfair to
2 ask the creditors, who are themselves publicly traded
3 companies, to expose their information and their analyses to
4 public scrutiny.

5 And I think that Judge Walrath really summed up the
6 issue in Washington Mutual. And what she said is, there's an
7 easy solution. If creditors want to participate in settlement
8 discussions in which they receive material non-public
9 information about the debtor -- or in our case, both about the
10 debtor and the creditors -- they either have to restrict their
11 trading or establish an ethical wall between the traders and
12 participants in the bankruptcy case. We've at least one party
13 who holds debt who has effectively agreed to become restricted
14 so that they can participate as a principal in the case.

15 What Judge Walrath then went on to say is that the
16 court does not believe that a requirement to restrict trading
17 or create an ethical wall in exchange for a seat at the
18 negotiating table places an undue burden on creditors who wish
19 to receive confidential information and give their input. And,
20 Your Honor, Judge Gerber, in Adelphia, reached precisely the
21 same conclusion.

22 So our concern, Your Honor, is that we have public
23 debt. If we are required to publish at the end of the
24 mediation if it's unsuccessful, in order for principals to be
25 cleansed, we will, in effect, have put out into the

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1 marketplace, information which the debtors are saying is one
2 hundred percent likely to be incorrect. And that, Your Honor,
3 is just a completely unfair burden.

4 So we're happy, Your Honor, to have a discussion about
5 confidentiality. As I represented, we're prepared to take that
6 provision out of the order for the purposes of trying to
7 negotiate something. And Your Honor, perhaps there's a
8 cleansing mechanism, perhaps there isn't. But I think the
9 default, Your Honor, is if you want a seat at the table, become
10 restricted or set up a wall.

11 THE COURT: Well, look. In the context of this
12 motion, I don't plan to resolve this issue today. It clearly
13 is something that needs to be, in the first instance, an effort
14 to negotiate it out with the mediator.

15 Before I came on the bench, for about a year before I
16 came on the bench, I was doing mediation. And one of the
17 things that's very common -- I think mediation is most useful
18 when information is freely shared among the principal parties
19 to the mediation. When that can't always be done, you can
20 certainly provide information for the mediator's-eyes-only.
21 It's preferable when it's shared more broadly. But there are
22 ways to deal with this.

23 I mean, what I'm -- let me see before. Anybody else
24 want to be heard on this mediation issue? Mr. Eckstein? Let's
25 not revisit everything, Mr. Shore that --

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1 MR. ECKSTEIN: Your Honor, just on this point, this is
2 really just for --

3 THE COURT: Okay.

4 MR. ECKSTEIN: -- maybe to facilitate a resolution of
5 this issue. I think just from the experiences that many of us
6 have had in the WaMu case, for example, there are going to be
7 two issues. And I think the mediator can actually help resolve
8 this. One is what to do with the debtors' non-public
9 information. And I think that's pretty straightforward. The
10 other issue is really settlement negotiations themselves. And
11 the question was whether settlement negotiations are somehow
12 material non-public information.

13 And I think what parties generally look for is as much
14 clarity as possible, that if they're going to participate in a
15 mediation, that settlement negotiations, if ultimately the
16 settlement doesn't lead to a resolution, is not in and of
17 itself, material non-public information. Because it's not
18 practical to disclose settlement positions.

19 So that is the issue, I think, that parties may want
20 to resolve. And my sense is, it can be resolved through some
21 discussion; and maybe the mediator can help --

22 THE COURT: Okay.

23 MR. ECKSTEIN: -- resolve that. And if there's need
24 for further input from the Court they can come back.

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1 THE COURT: That's fine.

2 And Mr. Shore, I didn't mean -- if there's something
3 else you want to add, go ahead.

4 MR. SHORE: I would say exactly what Mr. Eckstein
5 said; we need to have a frank conversation about it.

6 THE COURT: Yes.

7 MR. O'NEAL: Your Honor, Sean O'Neal on behalf of
8 Wilmington Trust.

9 I think to that end, I think, Mr. Lee's suggestion was
10 simply that we take out paragraph 4 in the proposed order, and
11 then the parties can have this discussion about which is
12 obviously a complex and important issue.

13 THE COURT: Okay, thank you.

14 Mr. Wofford?

15 MR. WOFFORD: Yes, Your Honor, a similar point with
16 respect to the order. Similarly, paragraph 5 provides that
17 parties like us with signed copies can provide information to
18 the mediator but not to other parties. Of course we don't know
19 what the debtors have provided and who signed copies in
20 mediation. So perhaps we should take that one out as well so
21 that we can resolve this.

22 THE COURT: Look, what I view this as is -- obviously
23 it's pretty clear what I'm going to do; I'm going to grant a
24 motion to appoint a plan mediator. I want the parties, in the
25 first instance, to see whether they can come to agreement on

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1 the form of the order. I think they need to do it with the
2 mediator who I'm going to appoint to make sure that what's
3 being proposed works for the mediator. I'm then certainly
4 prepared to enter it as an order in the case with respect to
5 confidentiality and other things. But it's one of the reasons
6 I want to see this process move forward, because I don't expect
7 on day one of meeting with the mediator you're going to get
8 this all resol -- hopefully you'll all agree on what ought to
9 go into the order. If not, the mediator will resolve it. And
10 if not, I will. Okay? That's what I basically contemplate. I
11 don't want to put in cement now things that I think are
12 fairly -- can be complicated and are important and sensitive.
13 Okay?

14 Does anybody else need to be heard on this?

15 All right. Mr. Lee, is there something else you
16 wanted to add?

17 MR. LEE: No, Your Honor --

18 THE COURT: All right.

19 MR. LEE: -- just standing up.

20 THE COURT: I'm granting the motion to appoint a plan
21 mediator. Indeed, the plan mediator is Judge James Peck; he
22 has agreed to serve. Some of you probably know Judge Peck
23 handled the first day motions in my absence in the case so he
24 has some familiarity with the issues. I have talked to him
25 briefly and he has expressed his willingness to do this.

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1 What I would like to happen is that Mr. Lee, Mr.
2 Eckstein, you should contact Judge Peck -- I'll call him after
3 I get off the bench -- and try and get some dates from him in
4 early January for initial discussions. I'm going to direct
5 that any party who wishes -- first off, you all ought to try
6 and see whether you can make some progress in negotiating the
7 form of the order. If you can't, I'm going to direct that by
8 January 7th -- 5 o'clock January 7th, the parties submit to
9 Judge Peck, not to me -- submit to Judge Peck -- not file, but
10 submit to Judge Peck proposals with respect to confidentiality
11 or anything else you want. But hopefully, in the first
12 instance, try and see if you -- this you ought to be able to
13 negotiate out. Okay? You shouldn't need a mediator to work
14 out the ground rules. All right? But if you don't, Judge Peck
15 will do it. All right? And if it's appropriate for the order
16 to be entered by me in the case, I will do that. Okay? But I
17 want, as the first step, everybody -- Mr. Eckstein and Mr. Lee,
18 you contact Judge Peck and see if you can at least do some
19 preliminary ground work with him and get some dates how he
20 wants to proceed. You can tell him I've set this Jan -- I'll
21 try and tell him I set this January 7th date. See if you can
22 at least get the ball rolling. Okay?

23 With respect to the form of the order, I think, for
24 present purposes, I don't see anything wrong with paragraphs 4
25 and 5 in this proposed order. It really doesn't impact; it

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1 gives some initial protection to everybody. It can be adjusted
2 in a further order and guidelines. So with respect to those
3 people who raised the issue about paragraphs 4 and 5, I think
4 the form of the order is satisfactory. It isn't going to lock
5 in cement anything that you're going to do going forward.

6 Okay?

7 Thank you, Mr. Lee.

8 MR. LEE: Thank you very much, Your Honor. I'm going
9 to turn the podium over to the examiner or the examiner's
10 counsel. Thank you.

11 MR. SEIFE: Good morning, Your Honor. Howard Seife
12 from Chadbourne & Parke, counsel for Arthur Gonzalez, the
13 examiner in the case.

14 As Your Honor may have noticed, the examiner is
15 present in the courtroom and is available, certainly, if you
16 have any questions after I finish the status report this
17 morning.

18 We wanted to take the opportunity this morning to
19 update the Court on the progress of the investigation. Many
20 parties have alluded to the role of the examiner in this case,
21 and I think it's a good opportunity so everyone knows exactly
22 where we are in the process.

23 The investigation, the scope of the investigation is
24 extremely broad, as set out in the various work plans and
25 orders. In particular, we're examining a course of conduct

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1 between ResCap and the other parties, AFI, Ally Bank, over a
2 period of, really, six years. And needless to say, over the
3 course of that time, there have been numerous transactions and
4 involvements, probably over nine major asset sales between
5 ResCap and Ally or Cerberus. There was -- one of the more
6 significant transactions was the series of steps involved in
7 the sale of Ally Bank, and that has been raised and alluded to
8 by parties, particularly the committee, as something very
9 significant that needs to be examined.

10 Throughout this process, we're working very closely
11 with the examiner's financial advisor, Mesirow, and they are
12 testing for value, consideration, exchange, at every step of
13 the way, as well as working with us on solvency and capital
14 adequacy issues for the relevant time periods and testing
15 periods for all of these transactions.

16 We are also working closely with Mesirow on the
17 variety and numerous agreements, financial agreements between
18 ResCap and Ally and Ally Bank, including derivatives, swaps,
19 hedges, subservicing agreement, also the allocation of the
20 government settlements. All of these are being looked at.

21 One of the -- what is becoming clear, a very
22 significant issue in determining the value of the releases
23 which are proposed under the plan and the consideration being
24 given, are the third-party claims against Ally and AFI, and we
25 are spending a considerable amount of time looking into the

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1 validity and scope of those claims. As part of that process,
2 we have contacted all of the parties that have alleged,
3 publicly or privately, that they have those claims separately
4 against Ally that would be covered by the proposed release, and
5 we have invited and received submissions from those parties,
6 and we have received over ten of them which we are in the
7 process of reviewing and considering.

8 To get the other side of the story, we have shared
9 those submissions, as agreed by all the parties, with both the
10 debtors and Ally, to get their reaction and counter-arguments
11 to those alleged claims. And in fact, we have received those
12 responses just yesterday, or I should say early this morning,
13 from those parties, and they are quite lengthy responses which
14 will be digested and taken into account in the preparation of
15 our report.

16 Enormous effort has been expended by the examiner's
17 professionals in the review of documents being produced by a
18 variety of parties. And we've been very active in soliciting
19 documents, primarily from Ally, the debtors and Cerberus, but
20 also probably a dozen other parties, and there are more parties
21 to come. To date, we've had produced to the examiner over
22 three million pages of documents which are being reviewed, and
23 we have taken those documents and productions and used them
24 during the course of interviews of former and current officers
25 and directors of Ally and ResCap. We've conducted, to date,

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1 thirty-seven interviews; two are going forward today. We
2 probably have an additional ten or so scheduled, and we
3 anticipate there may be fifteen or twenty additional ones to be
4 scheduled in the upcoming days. We have also met --

5 THE COURT: Hang on. Whoever's on the phone, you need
6 to put your phone on mute, because we're picking up a
7 background noise.

8 Go ahead, Mr. Seife.

9 MR. SEIFE: Thank you. We also have met with all the
10 major constituencies in the case on more than one occasion, in
11 many cases, and we have not excluded anybody that wanted to
12 talk to us, so we haven't had the issue which may arise on the
13 mediation.

14 In terms of timing, which I know everyone is very
15 keenly interested in, as we set forth in the second
16 supplemental work plan which we filed on November 26th, it is
17 the examiner's current intention to complete and file the
18 report in early April.

19 As we set forth in that supplemental work plan, our
20 timing is very much contingent and dependent upon parties
21 cooperating in an expeditious fashion with us, particularly in
22 terms of producing documents in a timely manner and making
23 witnesses available for interviews.

24 I must say, generally, parties have been very
25 cooperative in using their best efforts to work with the

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1 examiner, and we've had extensive discussions with the debtors
2 in terms of production. Needless to say, the debtors have the
3 biggest burden in terms of going through e-mails and
4 productions and making former and current officers and
5 directors available.

6 So the completion of the report, as I said, is
7 dependent upon that cooperation and compliance continuing.
8 We've had extensive discussions on the debtors going forward,
9 and we have their commitment to substantially finish document
10 production by the end of January.

11 We also have their agreement that the production,
12 primarily of e-mails, will be on a rolling basis, so we are not
13 faced with a massive dump on January 31st, which would
14 obviously put us considerably under the gun. And so far that
15 production has been on a rolling basis and we're getting the
16 cooperation that we had sought.

17 The second part of the timing will be to complete the
18 interviews, and we hope those to be substantially complete by
19 the end of February.

20 One of the things we've had to cope with, because of
21 the time constraints and the timing of production of e-mails
22 and the like, is we're really conducting these interviews on
23 the run, in the sense we don't have the luxury of having full
24 document production which could be very relevant for the
25 interview process. So we are reserving our right to call back

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1 witnesses, if necessary, if new information comes to light or
2 e-mails are disclosed which are relevant to those witnesses.

3 So assuming all of that continues as promised, we feel
4 we will be able to produce the report, as we've said, at the
5 beginning of April.

6 One of the issues which has come up, which is on the
7 docket for later today, is we will need to seek and are seeking
8 document discovery from at least four financial institutions
9 that our firm has a conflict with: Citibank, Morgan Stanley,
10 JPMorgan, and Goldman Sachs, and hence, we have applied to the
11 Court to hire a conflict counsel for the examiner. That will
12 the firm of Wolf Haldenstein; Eric Levine from that firm is in
13 the courtroom. And that application is somewhere buried in the
14 docket. There's no objection to it, Your Honor.

15 THE COURT: Why don't we deal with that right now?

16 MR. SEIFE: Oh, thank you.

17 THE COURT: Okay?

18 MR. SEIFE: We have an application on file with your
19 court. We filed a certificate of no objection. It's for the
20 retention by the examiner of conflicts counsel, and that is the
21 firm of Wolf Haldenstein. We know the application has been
22 reviewed by the U.S. Trustee's Office, and they asked for some
23 additional information which has been provided. As I said, a
24 certificate of no objection has been filed. The application
25 will be nunc pro tunc to October 15th, which is when we first

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1 engaged the services of Mr. Levine. This application, the
2 process was a bit slowed down because of Sandy and difficulty
3 of the U.S. Trustee to focus on this during the dislocations
4 because of the storm. So based on that, we would ask the Court
5 to enter the order seeking their retention.

6 THE COURT: All right. Mr. Masumoto?

7 MR. MASUMOTO: No objection, Your Honor.

8 THE COURT: All right. The Court has reviewed the
9 application. I think the application itself reveals that Mr.
10 Levine and I have known each other for many years. We belong
11 to the same synagogue. I think we have served on some
12 committees together. Mr. Levine and his wife and myself and my
13 wife, on occasion, are at the same social events. Mr. Levine
14 has appeared before me in at least one other matter. I've made
15 similar disclosures when that's occurred. It certainly -- I've
16 evaluated the appropriate standards of judicial conduct, and I
17 have no problem approving the retention of Wolf Haldenstein and
18 Mr. Levine. So that motion is granted.

19 MR. SEIFE: Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Seife.

21 MR. SEIFE: Unless you have any questions for me or
22 the examiner --

23 THE COURT: I do not.

24 MR. SEIFE: Thank you, Your Honor.

25 THE COURT: Thank you very much, Mr. Seife.

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1 Thank you, Mr. Gonzalez.

2 MS. MARTIN: Good morning, Your Honor. Samantha
3 Martin from Morrison & Foerster on behalf of the debtors.

4 THE COURT: You need to speak up. Pull the microphone
5 a little closer to you.

6 MS. MARTIN: No problem. Is that better?

7 THE COURT: Yes, that's better.

8 MS. MARTIN: Okay. Next on the agenda is the debtors'
9 motion to approve procedures regarding the future rejection of
10 executory contracts and unexpired leases, docket number 2326.

11 THE COURT: Yes.

12 MS. MARTIN: As you know, the debtors expect to
13 consummate the platform sale and the legacy portfolio sale in
14 early 2013. The debtors currently are evaluating which of
15 their contracts and leases should be assumed and assigned to
16 the purchasers, which ones should be assumed to facilitate the
17 debtors' wind-down activities, and which ones no longer provide
18 any benefit to the debtors' estates and should be rejected.

19 THE COURT: Could you or Mr. Lee just update the Court
20 on what the status of the efforts to close those sales are?

21 MR. LEE: Good morning, Your Honor. Gary Lee from
22 Morrison & Foerster.

23 The efforts are enormous. The engagement is constant.

24 THE COURT: Nice to hear that, but --

25 MR. LEE: -- and it is, Your Honor, an ongoing

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1 process. We're dealing with licensing issues, we're still
2 dealing with the GSEs, and there is a generally spectacular
3 level of engagement. I think, Your Honor, we will know quite
4 soon whether or not January the 31st is the closing date or if
5 we're going to slip into February.

6 THE COURT: On which sale are we talking about now?

7 MR. LEE: The platform sale.

8 THE COURT: Okay.

9 MR. LEE: I've heard nothing in relation to the sale
10 to Berkshire. And in relation to the platform, there are a
11 number of licensing issues. There are still, as Your Honor
12 noted, sale hearings and cure issues; they're complex, and
13 people are taking their time and being deliberate in the way in
14 which they resolve them.

15 But Your Honor, I'm not sure when our next status
16 conference is, but I'll certainly know before that status
17 conference if there's going to be any slippage into February.
18 And January the 31st is tight, it's still everybody's goal,
19 but --

20 THE COURT: Thank you.

21 MR. LEE: -- not inconceivable, Your Honor.

22 THE COURT: Thank you.

23 MS. MARTIN: Your Honor, by the rejection procedures
24 motion, the debtors are seeking to implement procedures for the
25 rejection of executory contracts and unexpired leases in order

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1 to streamline the cost and delay associated with seeking court
2 approval for each of the individual rejections.

3 Would you like me to walk Your Honor through the
4 procedures?

5 THE COURT: No, I think the only -- the objection, I
6 guess, was what the effective date of the rejection is. Have
7 you been able to resolve that?

8 MS. MARTIN: We have resolved that, Your Honor. We
9 actually, after several discussions, decided to carve out the
10 RMBS trustees' servicing agreements and custodial agreements
11 from the rejection procedures order, and I have a revised form
12 of order, if I can bring up a copy.

13 THE COURT: Could you hand that up?

14 MS. MARTIN: Sure.

15 THE COURT: Okay. Thank you.

16 MS. MARTIN: Your Honor, there are only a few changes
17 from the original order. First, we've agreed to consult with
18 the creditors' committee prior to filing the rejection notice,
19 to the extent practicable. We've also carved out the RMBS
20 trustees' servicing agreements and custodial agreements, as I
21 just noted, so they will not be subject to these rejection
22 procedures, and the debtors have reserved their rights to
23 request similar relief in that respect with subsequent motions.
24 And third, we've noted that nothing in the order will alter the
25 stipulation in the order authorizing the debtors to continue

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1 performing under the Ally Bank servicing agreement, which is
2 docket number 1420.

3 THE COURT: So what do you contemplate as the
4 procedure with respect to the RMBS trustees -- you've carved it
5 out of here; you'll have to make a separate motion to -- these
6 procedures won't apply to them.

7 MS. MARTIN: We either would file another motion for
8 procedures that would apply specifically to those contracts, or
9 we would just do it by separate motion. And also, Your Honor,
10 I should note that we expect the universe of those agreements
11 to be very small, actually; it would only be any servicing
12 agreement not taken by Ocwen.

13 THE COURT: All right. Okay. Does anybody else wish
14 to be heard with respect to the procedures on rejection of
15 executory contracts and unexpired leases?

16 All right. The Court has considered the motion, the
17 issues. The carve-out of the RMBS trustees, I think, is
18 appropriate. The law in this district is actually not crystal
19 clear on what the effective date of a rejection can be. These
20 procedures themselves are similar to ones that I've approved in
21 other cases, so the motion is granted.

22 MS. MARTIN: Thank you.

23 THE COURT: And I looked at the revised form of order
24 in that. Did the RMBS trustees see it?

25 MS. MARTIN: I've received feedback from several.

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1 THE COURT: Somebody's shaking their head in the back
2 of the room that they have, so --

3 UNIDENTIFIED SPEAKER: We have, Your Honor.

4 THE COURT: Okay. Thank you. All right. So that
5 motion's granted.

6 MS. MARTIN: Thank you.

7 THE COURT: Thank you.

8 MR. ROSENBAUM: Your Honor, Norm Rosenbaum for the
9 debtors.

10 I didn't know if Your Honor wanted to use this time to
11 take a quick break. We're moving on to stay relief motions,
12 adversary proceedings, and fee applications, and if there's
13 parties --

14 THE COURT: Can we take a break till January or do you
15 want to -- I bet everybody wants their money before year end.

16 MR. ROSENBAUM: That's true, Your Honor.

17 THE COURT: All right. Let's take a ten-minute
18 recess, okay? Thank you.

19 (Recess from 11:30 a.m. until 11:46 a.m.)

20 THE COURT: Please be seated. Just so everybody
21 understands, we're going to resume now until about 12:20, and
22 then we have to take a lunch break. It was a monthly judges'
23 lunch today which I need to go to. So let's see where we can
24 get to and then we'll resume after lunch. The plan is we'll
25 resume at 1:30 if we need to.

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1 Go ahead, Mr. Rosenbaum.

2 MR. ROSENBAUM: Your Honor, the next matter on the
3 agenda is the motion of Gregory Balensiefer for clarification
4 regarding relief from the automatic stay. Counsel for Mr.
5 Balensiefer is here to argue the motion.

6 THE COURT: Okay. Let me find my notes. Just bear
7 with me just a second.

8 Go ahead.

9 MR. WIGLEY: Good morning, Your Honor. Douglas Wigley
10 on behalf of creditor Gregory Balensiefer, the movant here.

11 We're seeking clarification as to the extent of the
12 Court's supplemental servicing order that had entered on July
13 13th, docket number 774. The parties are in agreement that the
14 supplemental servicing order lifts the stay as to Mr.
15 Balensiefer's -- what we're calling his equitable claim. It's
16 a claim that he brought seeking specific performance of a
17 settlement agreement between Mr. Balensiefer and two of the
18 debtors, GMAC Mortgage and Homecomings Financial, the terms of
19 which were to modify his mortgage loan, waive interest, and a
20 variety of other terms, including cancel a trustee's sale.
21 It's because that equitable claim is his defense to the
22 debtors' efforts to foreclose on this home, that the stay is
23 lifted.

24 THE COURT: The foreclosure has been enjoined for now?

25 MR. WIGLEY: Yes, it has. It was enjoined, actually,

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1 pre-petition, but then the case was stayed upon the debtors'
2 filing of his bankruptcy petition.

3 THE COURT: And you want to be able to recover legal
4 fees if you prevail?

5 MR. WIGLEY: Yes, we do. And that's where we diverge
6 from --

7 THE COURT: So let me ask this. I want to make it
8 clear where I'm coming from. Whether I consider this motion as
9 a motion for clarification or I could treat it as a motion, in
10 effect, to lift the stay to permit the matter to go forward to
11 determine legal fees, I mean, one way or the other, the issue
12 to me is should you be able to go forward and get legal fees,
13 either as a matter of clarification or because I modified the
14 stay to allow you to do it? So I'm more interested in hearing
15 why should you be able to seek to recover your legal fees,
16 whether it's because I further lift the stay to allow it or the
17 existing order should be interpreted to permit it?

18 MR. WIGLEY: Yes, Your Honor, and the reason it was
19 put as a motion for clarification is because we believe that
20 the supplemental servicing order contains language that does
21 lift the stay to allow this portion, this attorney's fee
22 request, to go forward. The attorney's fee request is not
23 necessarily just one by statute, but the settlement agreement
24 that Mr. Balensiefer is seeking specific performance of, it
25 itself has a mandatory attorney fee provision.

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1 THE COURT: Well, it has a prevailing party attorney
2 fee provision.

3 MR. WIGLEY: Yes. And because we're allowed to pursue
4 specific performance of that claim, we also have to ask for the
5 attorney's fees that are part of that settlement agreement.
6 Section 14(b) of the supplemental servicing order states the
7 following: "that the automatic stay shall remain in full force
8 and effect with respect to all pending and future interested
9 party direct claims and counterclaims (i) for monetary relief
10 of any kind and of any nature against debtors except where a
11 monetary claim must be pled in order for an interested party to
12 assert a claim to defend against or otherwise enjoin or
13 preclude a foreclosure".

14 THE COURT: What was the basis on which the court
15 enjoined the sale? What was the basis on which the court
16 enjoined the foreclosure?

17 MR. WIGLEY: The state court?

18 THE COURT: Yes. Yes.

19 MR. WIGLEY: It believed that we had a likelihood of
20 prevailing in enforcing the settlement agreement.

21 THE COURT: Okay.

22 MR. WIGLEY: It did require a bond, and Mr.
23 Balensiefer posted it; it's a monthly payment plan, but --

24 THE COURT: Okay. Let me hear from Mr. Rosenbaum.
25 Why shouldn't -- whether it's clarification or otherwise, why

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1 shouldn't I lift the stay, if necessary, to permit the court
2 to, if it's going to do that, fix the amount of attorney's
3 fees? Collecting may be a different issue, but -- because as I
4 understand, you're not seeking now to be able to collect it;
5 you say you have to plead it in order to get the relief you're
6 seeking. Am I right on that?

7 MR. WIGLEY: And just to add, yes, Your Honor, we're
8 only seeking to liquidate --

9 THE COURT: Yes.

10 MR. WIGLEY: -- the amount of attorney's -- not
11 collect. That has to be done through this proceeding; I
12 acknowledge that.

13 THE COURT: Okay. Mr. Rosenbaum, why shouldn't
14 that --

15 MR. ROSENBAUM: Your Honor, I understand they made a
16 choice to plead it, and we don't take issue with that. What
17 they're requesting the Court to do now --

18 THE COURT: Forget the clarification issue; why
19 shouldn't I lift the stay to permit the Arizona court, if Mr.
20 Balensiefer is the prevailing party, to fix the amount of
21 attorney's -- I'm not going to fix the amount of attorney's
22 fees in a case that's in Arizona.

23 MR. ROSENBAUM: Well, two reasons, Your Honor. One,
24 there's no timing it; there's no idea of when that might take
25 place. This litigation is a year old. They're not at trial

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1 yet. They're at dispositive motions. So essentially, what
2 they're asking the Court to do is agree in advance that two --
3 one or two or three years down the road, maybe less, that the
4 court in Arizona will have the right to determine the value of
5 their claim. They had filed proofs of claim --

6 THE COURT: Attorney's fee claim, if they're the
7 prevailing party on a -- they've succeeded in getting a
8 preliminary injunction. They're seeking equitable relief in
9 the case. If they're the prevailing party, there's a
10 contractual provision that entitles them to attorney's fees.
11 Okay? I don't want to have to determine the amount -- I don't
12 want to have a proceeding on a proof of claim to fix the amount
13 of attorney's fees for a case that was litigated in Arizona.

14 MR. ROSENBAUM: Well, Your Honor, I don't see that as
15 any much different than thousands of other cases where parties
16 are seeking affirmative, monetary claims against the debtors
17 that are stayed, that have filed proofs of claim, that will be
18 part of the claims resolution process. I don't see any
19 distinction here. There is a separate basis for the award of
20 the fees. It was outlined in their response. It's a separate
21 proceeding based on the laws of Arizona in the contract.
22 That's not going to be any different than many, many other
23 claims disputes we're going to ask Your Honor to resolve.

24 THE COURT: I think it's different. Okay? I've
25 considered this matter. Prepare an order that modifies the

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1 automatic stay, because I don't think this is clarification;
2 I'm not sure. No one contemplated this exact thing with
3 respect to the supplemental servicing order. So that it's
4 clear, I want an order that modifies the automatic stay to
5 permit Mr. Balensiefer to proceed with his assertion of a right
6 to recover attorney's fees if he's the prevailing party in the
7 Arizona action. To be clear, if he's the prevailing party, the
8 amount of the attorney's fees will be liquidated but cannot be
9 collected.

10 MR. ROSENBAUM: Thank you, Your Honor.

11 THE COURT: Okay? All right.

12 MR. WIGLEY: Thank you, Your Honor.

13 THE COURT: Thank you. And submit -- you ought to be
14 able to agree on a form of order that does this. Okay?

15 All right, next?

16 MR. NEWTON: Your Honor, James Newton from Morrison &
17 Foerster on behalf of the debtors.

18 The next matter on the agenda is the motion of
19 Stephanie L. and Michael P. Donaghy for relief from the
20 automatic stay; it's docket number 1615.

21 THE COURT: Right.

22 MR. NEWTON: I believe I heard them on the phone.

23 THE COURT: All right. Are the Donaghy on the phone?

24 MS. DONAGHY: Yes, we are.

25 THE COURT: Okay.

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1 MR. DONAGHY: Yes, Your Honor. How are you doing?

2 THE COURT: Okay. Mr. and Mrs. Donaghy, why don't you
3 tell me what relief you're seeking.

4 MS. DONAGHY: We're seeking relief from the automatic
5 stay to pursue sanctions against GMAC for their continual bad
6 faith conduct during the length of our own bankruptcy.

7 THE COURT: Well, if I understand the papers, your
8 bankruptcy proceeding is pending before Judge Wizmur in New
9 Jersey; am I correct in that?

10 MS. DONAGHY: Yes, you are.

11 THE COURT: And she has entered orders in the
12 bankruptcy case, and you're -- in fact, those orders, I think,
13 were entered after this bankruptcy started, and you're alleging
14 that GMAC violated that order; am I right?

15 MS. DONAGHY: Yes, I am.

16 THE COURT: All right. And as I understand it, Judge
17 Wizmur imposed sanctions against GMAC's lawyer; is that --

18 MS. DONAGHY: Yes, Milstead & Associates, but they
19 were actually sanctioned for their part in the bad faith
20 conduct which was separate from GMAC. I know Morrison &
21 Foerster are claiming that it's a together issue, but it's
22 actually not. She sanctioned them for continually filing MFRs
23 against us when they weren't receiving correct information from
24 GMAC, and they were going off this incorrect information they
25 had received. That is why she sanctioned Milstead & Associates

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1 for never actually questioning GMAC to the validity of the
2 claims that they were giving them.

3 THE COURT: All right. And she declined to proceed
4 against GMAC because of the automatic stay in this case.

5 MS. DONAGHY: She did, Your Honor. And I asked, when
6 we were there at the last time before her, what we should do if
7 we were still concerned about pursuing sanctions, and she very
8 simply said you need to go to New York --

9 THE COURT: Okay.

10 MS. DONAGHY: -- which is why we are now on the phone.

11 THE COURT: All right. Let me hear from GMAC's
12 counsel. So why shouldn't I -- I mean, is this post -- this is
13 alleged post-petition misconduct by GMAC, correct?

14 MR. NEWTON: That's what I'm hearing now. Previously,
15 when I had spoke with the Donaghys, my understanding was that
16 they were not seeking sanctions for violations or noncompliance
17 with that order. I have indicated to the Donaghys, via phone
18 and also in our objection in a footnote to our objection, that
19 the debtors would not oppose the ability of the Donaghys,
20 obviously, to go back to Judge Wizmur and seek any relief that
21 they believe is necessary for the enforcement of a post-
22 petition order that was entered in their Chapter 13
23 proceeding --

24 THE COURT: I mean, the reason --

25 MR. NEWTON: -- as a result of the motion for

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1 sanctions.

2 THE COURT: The reason that Judge Wizmur sanctioned
3 GMAC's lawyer was because of misconduct in the Donaghy's
4 bankruptcy case done by the lawyer on behalf of GMAC, correct?

5 MR. NEWTON: Correct, post-petition in the Donaghy's
6 bankruptcy.

7 THE COURT: Okay.

8 MR. DONAGHY: Your Honor, this is Michael Donaghy, if
9 I may?

10 THE COURT: Go ahead.

11 MR. DONAGHY: I actually wanted to bring to your
12 attention -- I don't know if it's possible, but the objection
13 that they filed against us, I was wondering if there was any
14 way that we could have that taken off of record based on the
15 sole fact that the new current objection that they filed
16 against us has all kinds of incorrect information about it.

17 THE COURT: Okay.

18 MR. DONAGHY: But --

19 THE COURT: I don't do anything -- you're going to
20 have to take it up with -- you're talking about the objection
21 they filed in New Jersey?

22 MR. DONAGHY: No, here with you, sir.

23 THE COURT: No, they can -- they're entitled to file a
24 pleading. I understand you may take issue with what's in it.
25 The issue for me is what should Judge Wizmur be free to do now.

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1 MR. DONAGHY: Okay.

2 THE COURT: I had understood -- tell me if I'm wrong.
3 Is the issue -- when I say post-petition, post-ResCap-petition
4 conduct in the Chapter 13 case. That Chapter 13 case goes
5 forward, the supplemental servicing order permits you to
6 proceed to try and foreclose on the Donaghy's home, and Judge
7 Wizmur found misconduct. Am I right about that?

8 MS. DONAGHY: Yes, you are, Your Honor.

9 THE COURT: Let GMAC's counsel address this.

10 MS. DONAGHY: All right.

11 MR. NEWTON: Judge Wizmur did sanction Milstead &
12 Associates.

13 THE COURT: Well, she didn't sanction GMAC because she
14 felt the automatic stay kept her from doing that.

15 MR. NEWTON: She did, but she addressed the motion for
16 sanctions, everything else other than the request for monetary
17 sanctions.

18 THE COURT: All right.

19 MR. NEWTON: GMAC --

20 THE COURT: Tell me this; does the automatic stay
21 apply to post-petition conduct by the debtor?

22 MR. NEWTON: Not as to post-petition conduct; we don't
23 believe it would apply as to the post-petition conduct of the
24 debtors. However, the motion for sanctions was filed back in
25 March, and my understanding from speaking with the Donaghys is

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1 that they would like to go back to the court in New Jersey and
2 request sanctions for the same issues that they raised in that
3 sanction motion back in March.

4 Now, I've expressed to them, as I've mentioned, that
5 to the extent they believe that Judge Wizmur's order that was
6 entered post-petition, the debtors have not complied with it or
7 otherwise didn't comply with it to their satisfaction, that's
8 something that the debtors would not oppose. And to the extent
9 that it was even necessary, the debtors would agree to relief
10 from the automatic stay to let them do that.

11 MS. DONAGHY: Your Honor --

12 THE COURT: No, just --

13 MS. DONAGHY: -- if I may --

14 THE COURT: No --

15 MS. DONAGHY: -- Stephanie Donaghy again. Not only,
16 though, are we concerned with GMAC's or ResCap's post-petition
17 behavior regarding that court order that was dated in August
18 2012, but we're still also concerned with their bad faith
19 conduct. Yes, there were things that arrived pre-petition;
20 that's why we initially went before Judge Wizmur. However,
21 even since ResCap has been filed with their own bankruptcy,
22 we've still run into roadblocks where there's a refusal on
23 GMAC's behalf to speak with us, which is obviously they're
24 improperly servicing our accounts. They're still imposing
25 unnecessary fees. It's not just the issue of the order not

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1 being followed, it's their continual conduct.

2 THE COURT: All right, Ms. Donaghy, thanks. Okay.

3 GMAC's counsel should prepare an order lifting the
4 automatic stay, to the extent it is necessary, to permit Judge
5 Wizmur to consider any applications for sanctions for any
6 conduct by or on behalf of GMAC after the filing of the ResCap
7 bankruptcy. Put the appropriate date in.

8 As I understand it, on August 20, 2012, Judge Wizmur
9 entered an order requiring GMAC to file an amended proof of
10 claim deeming the Donaghy's account current, remove certain
11 litigation codes from their account, and she did not consider
12 the sanctions portion of the motion based upon the automatic
13 stay in this case. The debtors subsequently filed an amended
14 proof of claim in the Jersey case.

15 The Donaghys allege that on September 21, 2012, they
16 received a statement in violation of the New Jersey order,
17 showing that payment for July 1, 2012 was due, along with fees,
18 the total unpaid amount being in excess of 8,469 dollars. The
19 debtors allege that the Chapter 13 Trustee had improperly
20 adjusted Donaghy's monthly payments.

21 In the New Jersey court, Judge Wizmur held a
22 telephonic hearing on October 18th, 2012 to address the issue,
23 and requested that GMAC file a second amended proof of claim in
24 the New Jersey bankruptcy case to reduce the Donaghy's monthly
25 payment to the correct level. And GMAC filed the second

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1 amended proof of claim on October 23, 2012. All that's post-
2 petition -- post-petition here.

3 If Judge Wizmur believes it's appropriate to sanction
4 GMAC for what occurred in her case, I'm lifting -- I don't even
5 know that the stay applied, but to the extent that the stay
6 would otherwise prevent her from doing so, the stay is lifted.

7 Draft an appropriate order. Please share it with the
8 Donaghys. If you can't agree on the form of the order, we'll
9 have a telephone hearing to resolve the issue. Okay?

10 MR. NEWTON: Thank you, Your Honor.

11 THE COURT: Thank you, Mr. and Mrs. Donaghy.

12 MR. DONAGHY: Thank you.

13 MS. DONAGHY: Thank you, Your Honor.

14 THE COURT: Next?

15 MR. NEWTON: I'll turn the podium over to my colleague
16 Erica Richards.

17 MS. RICHARDS: Good morning, Your Honor.

18 THE COURT: Before we go on, it's been a month or so
19 since I've had lift-stay motions and things like that. I want
20 to be clear that GMAC ResCap, if it's going to go ahead and
21 proceed with foreclosure actions in state courts or bankruptcy
22 courts or whatever around the country, it better comply with
23 all applicable law. And to the extent that another bankruptcy
24 judge or another state court judge finds that GMAC or any of
25 the other debtors violated the rights of borrowers, if they

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1 come here they're likely to get the stay lifted. I mean, I
2 just -- I can't make it any clearer. GMAC has to fully comply
3 with all applicable law in the way it services all loans.
4 Judge Wizmur, who is a very respected colleague and a very
5 level-headed judge, on a number of occasions has found that
6 GMAC screwed up with respect to the Donaghy's loan. It's not
7 the only time. There have been a series of events. And if she
8 wants to impose sanctions, let her do it.

9 Okay, let's go on to the next matter.

10 MS. RICHARDS: Good morning, Your Honor. Erica
11 Richards of Morrison & Foerster, appearing on behalf of the
12 debtors.

13 Your Honor, the next item on the agenda is our third
14 and final motion for stay relief on for a hearing today. It
15 was filed by pro se movants M. Nawaz Raja and Neelum Nawaz
16 Raja.

17 THE COURT: Yes.

18 MS. RICHARDS: I believe they're on the telephone
19 today.

20 THE COURT: Okay. Mr. and Mrs. Raja, are you on the
21 phone? Are either of the Rajas, or anyone on their behalf, on
22 the telephone?

23 Let me just check the telephone list to see whether --
24 were they on?

25 Yes. Okay. All right. The Rajas are not on the

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1 phone; I don't need to hear argument. The Court has reviewed
2 the papers with respect to -- this is the Raja's motion seeking
3 relief from the automatic stay. The debtors filed an
4 objection. The Raja's motion is ECF number 1818. The debtors'
5 objection is at ECF 1988. It's supported by the declaration of
6 Warren Graham Delahey. It's Exhibit 1 to ECF docket number
7 1988.

8 The Rajas filed their complaint commencing an action
9 pending in Loudoun County circuit court in Virginia on October
10 18, 2010. The movants, the Rajas, did not serve the complaint
11 on the debtors, and no further action was taken by the Virginia
12 court with respect to the debtors following the filing of the
13 complaint. As of the petition date, the state action remained
14 pending in the Virginia court.

15 The Rajas are seeking money damage claims against the
16 named defendants, which include each of the debtors, for
17 alleged violations of the Virginia Business and Professions
18 Code and Truth in Lending Act as well as injunctive and other
19 relief.

20 The state action is now stayed by virtue of the
21 automatic stay. The Rajas filed this motion on October 12,
22 2012.

23 This is similar to many other actions pending in state
24 or federal courts around the country where borrowers or former
25 borrowers of the debtors seek damages relief against one or
more of the debtors. The automatic stay affords one of the

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1 fundamental debtor protections provided by the bankruptcy law.
2 See Midlantic National Bank 474 U.S. 494 (1986).

3 As in all of these cases, the court considers the
4 Sonnax factors set forth by the Second Circuit in Sonnax case
5 907 F.2d 1280, 1286 (2d Cir. 1990). The court in that case set
6 out twelve nonexclusive factors for courts to consider. This
7 is very similar to many of the cases in which I've already
8 ruled, and I won't go through all of that reasoning. A simple
9 order should be presented denying the motion. The Rajas have
10 failed to establish cause for lifting the stay applying the
11 Sonnax factors. The motion is denied.

12 MS. RICHARDS: Thank you, Your Honor.

13 The next category of items on the agenda are the
14 adversary proceedings.

15 THE COURT: Yes.

16 MS. RICHARDS: And before we get to those --

17 UNIDENTIFIED SPEAKER: I'm sorry, Your Honor, it's
18 not --

19 MS. RICHARDS: Incorrect; sorry. We have a motion of
20 the official committee of creditors if they'd like to, I guess,
21 go first.

22 THE COURT: All right. I'm sorry, I didn't hear a
23 word you said, but that's okay.

24 MS. RICHARDS: The committee's motion is the next item
25 on the agenda. "Other Matters" --

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1 THE COURT: Okay.

2 MS. RICHARDS: -- (IV) on the agenda.

3 THE COURT: All right.

4 MR. O'NEILL: Good afternoon, Your Honor. Brad
5 O'Neill of Kramer Levin on behalf of the committee.

6 This motion is the committee's motion for standing to
7 pursue avoidance claims in respect of the claims of the junior
8 secured noteholders. I think this can be relatively brief. I
9 know Your Honor's pressed for time.

10 Four limited objections were filed to the motion. The
11 limited objections did not object to the substance or
12 colorability of the claims outlined in the complaint drafted by
13 the committee or by to the advisability of pursuing those, but
14 instead raised to principal collateral objections.

15 We have, over the last several days, negotiated with
16 each of the limited objectors, and we are pleased to announce,
17 Your Honor, that we have reached agreement with all on the form
18 of a consensual order.

19 THE COURT: During the short break, I was handed a
20 nearly indecipherable markup of the order, which I think I was
21 able to follow.

22 MR. O'NEILL: I am prepared to --

23 THE COURT: Look, here's what I would suggest. I did
24 work my way through this. Those who filed objections, are
25 you -- does any -- assuming that this is retyped in a form that

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1 can be read, are the objectors satisfied with the changes, Mr.
2 Shore, or are you --

3 MR. SHORE: Yes, Your Honor. I have one comment,
4 but --

5 THE COURT: Okay.

6 MR. SHORE: -- I need to draw Your Honor's attention
7 to it, and I think you can read it, which is paragraph 5. Just
8 so we're clear what's going on in this order.

9 The committee is getting standing to pursue claims,
10 among other things, to come after us.

11 THE COURT: They want to see your clients.

12 MR. SHORE: Okay, bring it on. I mean, I'm not going
13 to respond to the merits of it at all. But what's ending up
14 happening here is we're going out to mediation, right? Maybe
15 we get to a plan during the debtors' exclusive periods. Under
16 this order, what's ending up happening is if the debtors
17 propose a plan which settles our claims, and the committee does
18 not consent, we're going to have to get into litigation over
19 whether or not the committee's consent was reasonable enough.
20 It's just we've got a weird thing in this STN order, which is
21 affecting the exclusivity that Your Honor just granted.

22 Now, what we've done to try to fix that is any other
23 party, though, can -- to the extent exclusivity is lifted, can
24 propose such a plan. So we may get into a situation, if the
25 committee doesn't like where the settlement is but the votes

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1 exist within the capital structure to push it through, we're
2 creating a little bit of a tension here that we're just going
3 to have to address at some later date. The debtors have said
4 we're willing to give the committee, essentially, a reasonable
5 veto right over any plan we'd like to file during this period.

6 THE COURT: All right. Mr. O'Neill?

7 MR. O'NEILL: Your Honor, a good portion of the
8 handwriting you were complaining about is Mr. Shore's. And
9 he's --

10 MR. SHORE: My handwriting is very good, Your Honor.

11 MR. O'NEILL: He has had his crack --

12 THE COURT: Mr. Shore, my doctor writes better than
13 this.

14 MR. O'NEILL: He's had his crack at this order and
15 he's drafted a good portion of it, and everyone's agreed on the
16 language. I know he showed up here and just tried to give you
17 his gloss on what the language means.

18 THE COURT: I don't want to get into that now.

19 MR. O'NEILL: Okay.

20 THE COURT: The language is the language.

21 MR. O'NEILL: I don't consent to what he said; I
22 consent to what's in the order.

23 THE COURT: Okay. Anybody else want to be heard
24 quickly?

25 MR. ADAMS: Thank you, Your Honor. Jason Adams,

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1 Kelley Drye & Warren, on behalf of the UMB Bank.

2 Two very quick points. I know time is short. One, to
3 kind of clarify the record in this case, there's been a lot of
4 pleadings in the last two months referring to U.S. Bank.

5 THE COURT: Really?

6 MR. ADAMS: A few, Your Honor.

7 THE COURT: This is just --

8 MR. ADAMS: But there's been several pleadings
9 referring to U.S. Bank as the trustee here. We wanted to
10 clarify for the record, and we have filed appropriate notices,
11 the UMB Bank is the successor trustee, pursuant to a tripartite
12 agreement with the U.S. Bank and the debtors on October 22nd,
13 and appropriate notices were filed on October 24th. So I just
14 wanted to clarify the record on that.

15 Secondly, Your Honor, we concur with the statements
16 made by Mr. Shore with regards to the veto rights and the
17 curiosity of kind of how this is structured. But we have
18 reviewed the order and we do consent to it, Your Honor.

19 Thank you.

20 THE COURT: Okay.

21 MR. O'NEILL: Your Honor, there is one additional
22 clarification which was raised, I think, by the debtors and by
23 AFI, which we agreed to make on the record, and that is you'll
24 notice at the top of the third page, the language "and
25 privileges" is struck out. The reason for that is that AFI and

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1 the debtors were concerned that there not be an implication
2 that the committee was seeking or claiming an entitlement to
3 invade the debtors' privilege -- meaning attorney-client
4 privilege, as a result of the grant of the STN standing or this
5 order. And that certainly was not our intent, and so that is
6 the reason why that language was struck out.

7 THE COURT: Okay. Anybody else wish to be heard?

8 MR. GOREN: Just very briefly, Your Honor. Todd
9 Goren, Morrison & Foerster on behalf of the debtors. Just --

10 THE COURT: Is any of this handwriting yours?

11 MR. GOREN: None of it's my handwriting, Your Honor,
12 thankfully.

13 Just to address Mr. Shore's point, I mean, we
14 understand the dynamic he's talking about; we evaluated it very
15 closely. At the end of the day, we think it's unlikely we
16 would propose a plan with a settlement of the committee's
17 litigation without them on board with that settlement. But if
18 there is broad support among the capital structure for a
19 settlement that the committee doesn't support, we believe we
20 have sufficient flexibility under this language to propose that
21 plan, and the committee has another potential objection to that
22 plan, and we can deal with that at that point.

23 THE COURT: Well, look, to the extent I could read it,
24 my view was at the end of the day I'm still going to have the
25 discretion of deciding what to do; if one constituency, over

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1 the objection of the committee, wants to go ahead and propose a
2 plan that settles the claims, ultimately it's going to land
3 back on my desk. I mean, am I wrong about that?

4 MR. GOREN: That was exactly the way we looked at it,
5 Your Honor.

6 THE COURT: And Mr. Eckstein, do you agree with that?

7 MR. ECKSTEIN: That's how we viewed it as well.

8 THE COURT: Okay. And the one area in STN motions
9 that I think even Smart World is left perhaps more unsettled,
10 is what happens about settlement. We'll save it for another
11 day. That's basically it.

12 So I think I'm going to grant the motion. I think the
13 objections have been resolved, for today, at least, and
14 hopefully we'll never have to reach the issue later on.

15 I guess the only other observation I would make is
16 that with respect to the time limit, it requires the consent of
17 Mr. Shore, at some point, if you want to move the date beyond
18 what's in here?

19 MR. O'NEILL: Trustee is a defined term; it
20 incorporates both, I think -- yes, yes, that's correct.

21 THE COURT: Okay. Why --

22 MR. O'NEILL: I mean, technically, it's U.S. Bank,
23 but --

24 THE COURT: Okay. All right. I'm going to grant the
25 motion, and I'll -- I think I was able to read everything.

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1 MR. O'NEILL: We can have it typed and circulated.

2 THE COURT: Yes, and obviously we'll -- and make sure
3 it gets circulated. And assuming I've read it correctly, it'll
4 be entered. Okay?

5 MR. O'NEILL: Thank you.

6 THE COURT: Thank you very much. We may -- well,
7 what's next, Mr. Rosen -- Mr. Rosenbaum?

8 MR. ROSENBAUM: The next items on the agenda, Your
9 Honor, are two pre-trial conferences and adversary proceedings,
10 and the debtors' motion to dismiss both of those adversary
11 complaints.

12 THE COURT: Do you really want them dismissed for
13 ineffective service of process? I mean --

14 MR. ROSENBAUM: Your Honor, that is not the main basis
15 for our request.

16 THE COURT: I mean, you moved on that basis.

17 MR. ROSENBAUM: We moved on that basis. It's becoming
18 a bit of a problem for us, Your Honor, in terms of actually
19 tracking a number of adversary proceedings. If I may, Your
20 Honor, we're probably up to a good half a dozen. I think for
21 the most part we feel these are misplaced and don't belong in
22 this court.

23 THE COURT: Where do they belong? I mean, your
24 automatic stay prevents them from filing somewhere else.

25 MR. ROSENBAUM: Your Honor --

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1 THE COURT: Because you've asked the alternative for
2 abstention; abstention to what? There's no other cases
3 pending.

4 MR. ROSENBAUM: They have the opportunity -- at least
5 the two -- well, Your Honor, one of my colleagues is going to
6 be arguing the motions, but just globally, looking at all these
7 that have been filed, there are several of them that fall into
8 two categories. One, they are actually in either judicial or
9 nonjudicial foreclosure states where the borrowers have not
10 taken the appropriate -- have not commenced the appropriate
11 action which they're entitled to commence under the
12 supplemental servicing order.

13 THE COURT: We're talking about -- the two we're
14 talking about now are Williams v. GMAC Mortgage, et al.,
15 adversary proceeding number 12-01896, and Wagner v. Residential
16 Funding Company, adversary proceeding 12-01913; am I correct in
17 that?

18 MR. ROSENBAUM: That's correct, Your Honor.

19 THE COURT: And in both of those you -- among other
20 grounds, you move to dismiss for failure to properly serve the
21 complaints.

22 MR. ROSENBAUM: Yes, Your Honor.

23 THE COURT: Now, with respect to the Wagner case,
24 there are nondebtor defendants, and they've filed motions to
25 dismiss, and they're on the calendar for January 29th.

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1 MR. ROSENBAUM: I understand that, Your Honor.

2 THE COURT: Why shouldn't I just adjourn this one
3 until --

4 MR. ROSENBAUM: Well --

5 THE COURT: -- January 29th?

6 MR. ROSENBAUM: -- Your Honor, and that's acceptable
7 to us, but just may I address the abstention --

8 THE COURT: Go ahead.

9 MR. ROSENBAUM: -- a little more? In Wagner and in
10 Williams, there are pending nonjudicial foreclosures that have
11 not been completed, and so they're parallel cases, in a way.
12 And the plaintiffs in those actions have not commenced the --
13 have not taken -- availed themselves of the opportunities to
14 commence -- to oppose the nonjudicial foreclosure by commencing
15 the appropriate action there.

16 THE COURT: Well, are you saying that they can't bring
17 an adversary proceeding here without first commencing an action
18 in state court and wherever?

19 MR. ROSENBAUM: No, I'm saying -- what we're saying is
20 that we believe there's a basis for this Court to abstain under
21 1334(c)(1) in favor of an action that they can commence, that
22 they're entitled to commence under the supplemental servicing
23 order. I mean, Your Honor, we're just trying to --

24 THE COURT: First off, before you do that --

25 MR. ROSENBAUM: -- introduce some rationality here.

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1 THE COURT: -- the Wagner case, they served the
2 complaint but they used the wrong -- instead of -- they served
3 it on suite 250 rather than suite 350, and that's --

4 MR. ROSENBAUM: Well, Your Honor, I mean -- we're
5 happy to withdraw that, but the point of raising those issues,
6 we're not hearing about these, we're finding them on the
7 docket; some were getting misfiled in the nonmain case. We've
8 now put in place processes, we're treating these as if we have
9 to timely file --

10 THE COURT: So you think my ruling on these two is
11 going to change the fact that complaints aren't showing up in
12 the right place? I mean, I just --

13 MR. ROSENBAUM: No, Your Honor, we think that your
14 ruling abstain -- if you were to abstain, we could use that as
15 a basis to have rational discussions with --

16 THE COURT: Is anybody here in Wagner or Williams?

17 MR. AMOS: Yes, Your Honor. Timothy Amos for myself
18 and Golden & Amos, Parkersburg, West Virginia.

19 THE COURT: For which case is that now?

20 MR. AMOS: Van Wagner, Your Honor.

21 THE COURT: All right.

22 MR. POULSON: Your Honor, Kiyam Poulson, Druckman Law
23 Firm, PLLC for defendant Seneca Trustees, Inc.

24 THE COURT: I couldn't hear that, so you're going to
25 have to make your appearance again.

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1 MR. POULSON: Sorry, Your Honor. Kiyam Poulson,
2 Druckman Law Firm, PLLC for defendant Seneca Trustees, Inc.

3 THE COURT: In which of the cases is it?

4 MR. POULSON: In Wagner.

5 THE COURT: Wagner, okay.

6 MR. ABRAMS: Good morning, Your Honor. David Abrams,
7 Strongin Rothman & Abrams, here for defendants Peter T.
8 DeMasters; the law firm Flaherty, Sesabaugh, Bonasso PLLC; and
9 Susan Romain, in the Wagner case.

10 THE COURT: Okay. And you've got motions to dismiss
11 on for January 29th?

12 MR. ABRAMS: Actually, Your Honor, we filed an answer,
13 but we do intend on making a motion --

14 THE COURT: Okay.

15 MR. ABRAMS: -- to dismiss as well, returnable on that
16 date.

17 MR. POULSON: Yes, Your Honor, our motion is
18 returnable for the 29th.

19 THE COURT: All right. I'm going to take both of
20 these matters under submission without argument.

21 MR. ROSENBAUM: Thank you. Your Honor, may I make one
22 preview?

23 THE COURT: I'm going to take both of them under
24 submission --

25 MR. ROSENBAUM: No, no --

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1 THE COURT: -- because if I allow you to argue, I've
2 got to allow other counsel to argue. I'm going to take both
3 matters under submission.

4 MR. ROSENBAUM: It has nothing to do with those
5 matters, Your Honor.

6 THE COURT: Go ahead, Mr. Rosenbaum.

7 MR. ROSENBAUM: Just briefly; I know we're trying to
8 conclude here quickly.

9 What we'd like to propose to Your Honor, and we'll do
10 by formal motion early next year, is we believe this process
11 would benefit if we could put some procedures in place, at
12 least allow a time period for some informal mediation with
13 these parties before any of the defendants have to answer.
14 We'd like to involve the committee and the special committee
15 counsel for borrower issues, at least have a --

16 THE COURT: Well, I wish the special committee -- the
17 committee's special counsel for borrower issues was here. I
18 don't know whether anybody is here from --

19 MR. ROSENBAUM: I've addressed it --

20 THE COURT: -- because this really is something you
21 ought to be on top of. I mean, these are exactly the -- this
22 is part of the reason that I wanted special counsel to the
23 creditors' committee for borrowers issues to see if we could
24 deal with cases like these.

25 MR. ECKSTEIN: Your Honor, I believe that he is

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1 closely involved in this. We'll make sure that he's in court.

2 THE COURT: Why don't you identify yourself for the
3 record?

4 MR. ECKSTEIN: Kenneth Eckstein --

5 THE COURT: No, no, you I know.

6 MR. KRELL: Your Honor, Justin Krell, Silverman
7 Acampora, special counsel for the borrowers committee, Your
8 Honor.

9 THE COURT: Okay. What I'm going to do with both
10 Williams and Wagner cases, I'm going to adjourn the hearing in
11 both cases until January 29th. I'm going to direct the
12 committee's special counsel to confer with the plaintiffs'
13 counsel in both of these cases and with defendants' counsel,
14 and see whether before January 29th there can be some agreement
15 about how this ought to proceed or not. Okay?

16 I mean, both of these had motions to dismiss for
17 failure to serve or improper service. The one the suite number
18 was off by one digit. The other one appears not to have been
19 served; there was an e-mail about it but it was not served.
20 But if I dismiss the cases on improper service, they'll just
21 try it again; that's not going to solve the problem. So I'm
22 adjourning both matters to January 29th. I direct special
23 counsel to the committee to confer and see whether there's a
24 way you can -- you're not going to resolve the underlying
25 issues, I don't think, but let's see if there's some resolution

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1 possible. Okay?

2 MR. KRELL: Yes, Your Honor.

3 THE COURT: All right. Mr. Rosenbaum, anything else?

4 All right. And those of you who are on the phone,
5 hopefully you heard what my direction was, so your matters are
6 still alive. I do expect you to cooperate with the committee's
7 special counsel.

8 Okay, Mr. Rosenbaum?

9 MR. ROSENBAUM: Your Honor, I know you have to go, and
10 I'd like to take this point up after lunch, the other pending
11 adversaries, and I think special borrower counsel could be
12 helpful.

13 THE COURT: Well, we have to come back for fee
14 applications anyway, so we'll be in recess until 1:45.

15 MR. ROSENBAUM: Thank you, Your Honor.

16 THE COURT: And anybody who doesn't need to be here
17 this afternoon is certainly excused.

18 (Recess from 12:25 p.m. until 1:47 p.m.)

19 THE COURT: Please be seated. We're back on the
20 record in Residential Capital, number 12-12020.

21 Mr. Rosenbaum?

22 MR. ROSENBAUM: Your Honor, Norm Rosenbaum, Morrison &
23 Foerster for the debtors.

24 Your Honor, before we proceed, we just want to let you
25 know that Mr. Raja, who apparently wasn't on the call when you

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1 heard his motion, I think has renewed his appearance.

2 THE COURT: All right. The result when I wasn't able
3 to hear Mr. Raja -- and I just understand in chambers that he
4 was on the line but "listen only" -- was that I took the matter
5 on the papers and didn't permit argument by either side. I
6 ruled from the bench and therefore my ruling stands. Let's
7 proceed.

8 MR. ROSENBAUM: Your Honor, would you indulge me for a
9 couple more minutes on adversary proceedings?

10 THE COURT: Go ahead.

11 MR. ROSENBAUM: The suggestion that Your Honor made
12 was a very good one and one we had thought about and was
13 considering to consult and utilize Mr. Freedman's office for
14 that purpose and consult with the plaintiffs. There's about
15 fourteen pending adversaries, I think twelve of which have been
16 filed by pro se's. In the next week or so, based on the filing
17 date, we would have to answer three of them. With the Court's
18 approval, I'd like to suggest that the Court enter an order
19 extending the time for all the defendants to answer for at
20 least thirty days, and we can try to put that process in place
21 and speak to these parties and see if there's a resolution. If
22 not, everyone's rights are reserved.

23 THE COURT: I agree. I would ordinarily be prepared
24 to extend time under other circumstances, but here it's
25 definitely appropriate. So submit orders and I will extend the

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1 debtors' time to respond to the complaints.

2 Now, in some of them, there are nondebtor defendants
3 as well. So what -- I don't know whether in the cases that are
4 pending whether that's true; certainly there were several today
5 where there were nondebtor defendants.

6 MR. ROSENBAUM: There are, Your Honor.

7 THE COURT: So I do believe it is important for the
8 borrower -- the committee's special counsel to confer -- the
9 debtors' counsel to confer, as well, with the plaintiffs in the
10 cases. So I will enter an order that extends the time of all
11 defendants to respond to the complaint for thirty days.

12 MR. ROSENBAUM: Thank you, Your Honor. And as I said
13 before, I think we'd like to formalize that process and we'll
14 file a motion --

15 THE COURT: Fine.

16 MR. ROSENBAUM: -- putting that in place. Thank you,
17 Your Honor.

18 THE COURT: Thank you very much, Mr. Rosenbaum.

19 MR. ROSENBAUM: With that, I'll turn the podium over
20 to Mr. Marinuzzi.

21 THE COURT: Thank you very much.

22 MR. RAJA: Yes, I'm Mohammad Raja. I'm on the line.

23 THE COURT: I'm sorry; who is that?

24 MR. RAJA: This is Mohammad Raja.

25 THE COURT: Yes. If you were able to hear this

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1 morning, and I understand that the CourtCall operator had
2 placed you on "listen only" and so you weren't able to be heard
3 by the Court. I took the matter based on the papers and I
4 didn't permit the debtors' counsel to argue either, and I ruled
5 from the bench based on the papers before me. So that matter
6 is concluded for now. You can either --

7 MR. RAJA: So Your Honor made a ruling on the --

8 THE COURT: I already --

9 MR. RAJA: -- motion filed -- documents filed?

10 THE COURT: Yes, I ruled based on the documents filed.

11 MR. RAJA: Okay. Your Honor, I have a question and a
12 suggestion, because my hearing in this case is going on here in
13 circuit court, so then that will be stated in the outcome of
14 this or will it continue, because the prime hearing is on -- in
15 one case it's on January 3rd and in second case, just the
16 matter was on and court said that, you know, I had a private
17 practice to proceed.

18 THE COURT: I'm not going to answer questions; I'm
19 going to enter an order, and that will resolve the matter as
20 far as this Court is concerned. Counsel for the debtors is
21 going to submit an order.

22 MR. RAJA: Uh --

23 THE COURT: All right. Sir, we're moving on, on the
24 calendar.

25 MR. RAJA: No problem. I'm sorry for that.

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1 THE COURT: That's all right. Thank you.

2 MR. RAJA: Thank you, sir.

3 THE COURT: You can either remain on the line or you
4 can excuse yourself. Okay?

5 MR. RAJA: If I'm done, then I can excuse myself.

6 THE COURT: Yes, you are done. Thank you very much.

7 MR. RAJA: Thank you, sir.

8 THE COURT: Okay.

9 MR. RAJA: Bye-bye.

10 THE COURT: Go ahead, Mr. Marinuzzi.

11 MR. MARINUZZI: Good afternoon, Your Honor. For the
12 record, Lorenzo Marinuzzi.

13 We turn now, Your Honor, to the interim fee
14 applications that have been filed in these cases, and there are
15 twenty-eight, if I counted correctly, in total.

16 They, between the time of the U.S. Trustee's
17 objection, which was filed almost two weeks ago, and this
18 morning, have all been resolved to the satisfaction of the U.S.
19 Trustee's Office. We submitted to chambers a chart, which
20 hopefully the Court found helpful in identifying the resolution
21 of the various objections. It was reviewed and approved by the
22 U.S. Trustee's Office. And before the hearing started, since
23 the chart was circulated before we were able to resolve with
24 the U.S. Trustee's Office Morrison & Foerster's fee application
25 objection, I hand-wrote the resolution into the chart and gave

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1 it to your clerk.

2 THE COURT: And I have that in front of me, Mr.
3 Marinuzzi.

4 MR. MARINUZZI: Thank you. I don't know how Your
5 Honor wishes to proceed. I don't think we're going to hear
6 from the U.S. Trustee on any of these applications. I do want
7 to note, however, as part of the resolution of two of the
8 debtors' professionals' applications, specifically Morrison &
9 Foerster and FTI, that each of these two professionals has
10 agreed to carry, probably to the next interim hearing, the U.S.
11 Trustee's objection on the fees incurred in connection with the
12 KEIP KERP program.

13 THE COURT: Just say that again. I want to hear that
14 again, because that's the one that I have the greatest -- I
15 have something to say about.

16 MR. MARINUZZI: Your Honor, what we've agreed with the
17 U.S. Trustee's Office is that rather than litigate that issue
18 today, we've decided to carry it. So with respect to 308,000
19 dollars of Morrison & Foerster's fees, and I believe 58,000
20 dollars of FTI's fees, those are going to be subject to the
21 U.S. Trustee's ability to argue that objection at the next
22 interim hearing, if we're unable to resolve it among ourselves.
23 At least their objection. Your Honor -- obviously, to the
24 extent Your Honor has issues, then Your Honor will share with
25 us and we'll be guided accordingly.

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1 THE COURT: Well, I'll hold my fire.

2 MR. MARINUZZI: Okay, Your Honor.

3 THE COURT: Let me say this. The reason -- this
4 should be no secret to anybody, because chambers was asked
5 whether anyone from Mercer had to appear on behalf of -- Mercer
6 had to appear in court today or whether they could be on the
7 phone, and with respect to some other applicants who were out
8 of town I said they could appear by phone. With respect to
9 Mercer I wanted a representative here in person. I saw the
10 objections of the U.S. Trustee with respect to fees for both
11 Mercer, Morrison & Foerster, and FTI with respect to the
12 KEIP -- the first KEIP, and KERP. I made some comments in my
13 written opinion with respect to the KEIP. I think there's a
14 footnote that specifically addresses Mercer, words to the
15 effect of they should have known better. They should have
16 known better, because they were counsel in Borders when I wrote
17 an opinion on it, and my comments, I think, would apply equally
18 even though Morrison & Foerster wasn't counsel in that case.

19 I frankly thought it was largely a waste of money and
20 considerable amount of the Court's time required to deny a
21 motion that I thought was fairly clear. I'll leave it to Mr.
22 Masumoto and the U.S. Trustee in the first instance to see if
23 they can resolve, to their satisfaction, issues regarding the
24 KEIP and KERP. The KERP was approved. That wasn't objected
25 to, and the Court approved it. It was appropriate, and the

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1 Court approved it.

2 The law in this district is that the Court's role in
3 reviewing fees is to determine as of the time the services are
4 performed whether there's a benefit to the estate, and the
5 Court's question is what was the benefit to the estate of a
6 KEIP motion that was substantially deficient? Let me leave it
7 at that.

8 Now, it may well be that some amount of the services
9 that were performed in connection with the unsuccessful KEIP
10 motion wound up being a benefit in reducing the work once it
11 was fixed, but I'll leave it -- how that should be dealt with
12 I'm going to leave, in the first instance, to the U.S. Trustee,
13 and I know the U.S. Trustee did object to fees of Morrison &
14 Foerster, FTI, Mercer with respect to the time spent on the
15 KEIP. I think the issue is well taken. How it should be dealt
16 with, I will leave it to Mr. Masumoto and his colleagues in the
17 first instance, but let me make my position clear about it.
18 Okay?

19 MR. MARINUZZI: Understood, Your Honor. Thank you.

20 THE COURT: All right. I think, Mr. Marinuzzi, what
21 might be best since -- and I appreciate the fact that everyone,
22 all of the professionals, worked with Mr. Masumoto in resolving
23 the issues that the U.S. Trustee raised with respect to the fee
24 applications. There are obviously voluminous fee applications,
25 all of which were reviewed very carefully by my chambers, and

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1 obviously were reviewed very carefully by the U.S. Trustee's
2 Office.

3 Some of you, I think, may have been here yesterday
4 when I had MF Global fee applications. I know you weren't
5 here, Mr. Marinuzzi, but your colleagues --

6 MR. MARINUZZI: We heard all about it, Your Honor.

7 THE COURT: -- were here.

8 MR. MARINUZZI: Yes.

9 THE COURT: And I'm going to repeat some of what I
10 said yesterday for the benefit of the professionals in this
11 case. And, really, I think on some of these things there
12 probably is not uniformity among the judges on this court, but
13 I try to be consistent from case to case in the guidelines that
14 I apply and my chambers apply in reviewing fee applications.
15 And so let me just set those out, because hopefully it will
16 guide everyone in the future.

17 I won't approve reimbursement for travel within the
18 City of New York, travel time for within the City of New York.
19 I consider that part of overhead. So if you're coming to your
20 office -- if you're working that's one thing, but if you're
21 coming from your office to court, I don't like to see -- I
22 don't want to see -- and I don't want it hidden, okay, so it's
23 when I see travel to and from court that doesn't get approved.
24 And the issue arose yesterday because the debtor had counsel
25 from Philadelphia as one of its counsel, and I made clear I

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1 wouldn't approve their time traveling to court because they
2 happen to be in Philadelphia. They're hired for a case in New
3 York.

4 I will not approve reimbursement for car services,
5 taxis, or parking for travel within New York City unless it's
6 supported with details that show it was travel either before 8
7 a.m. or travel after 8 p.m. or to or from court. I'll only
8 approve car service, taxis if voluminous documents were brought
9 to court. Otherwise I expect people to take public transit,
10 the same way I do, and the same way I did when I was in
11 practice, okay? So, you know when I see -- it's a red flag
12 when we see parking fees or numerous car service expenses,
13 sometimes for multiple lawyers in the same firm traveling to
14 and from court.

15 No reimbursement for airfare, other than coach class
16 on domestic or international flights. And I didn't say this
17 yesterday, but I am going to require -- the more I've thought
18 about it -- I want certification from any lawyers who are
19 putting in fee applications that include expenses for air
20 travel that any airfare is for coach class. If your firms want
21 to send you business class or first class that's fine, but the
22 estate is not going to be paying for anything other than coach
23 class.

24 Reimbursement for meals -- the U.S. Trustee guidelines
25 have a twenty-dollar cap for overtime meals. That twenty-

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1 dollar cap applies to all business meals, overtime or not, and
2 any request for reimbursement needs to indicate the persons
3 attending. So we'll sometimes see 300 dollars, but you don't
4 know how many people. It needs to identify the people. If
5 it's over twenty dollars it needs to identify the number of
6 people and who they are.

7 In MF Global this was a big issue yesterday. I don't
8 think it's an issue here. There were barristers. You don't
9 have any foreign counsel in this case, do you?

10 MR. MARINUZZI: Not to my knowledge, Your Honor.

11 THE COURT: Okay. All right. I'll leave that out
12 then.

13 So all expense reimbursement requests must provide
14 detailed support for the expense; date, time, amount, persons
15 using the service, et cetera. Photocopying must include the
16 number of pages and the per-page charge. The U.S. Trustee
17 guidelines are twenty cents, the lower of twenty cents or cost,
18 and I guess, Mr. Masumoto, what, the usual these days is ten
19 cents?

20 MR. MASUMOTO: Right. Without proving actual cost it
21 pays at ten cents.

22 THE COURT: Right. So those, and with respect to the
23 fee apps before me there were numerous applications that appear
24 to include travel time within the City of New York. For out-
25 of-town travel the case law and the guidelines generally are

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1 fifty percent for nonworking. You can bill for working time,
2 but fifty percent for nonworking time. I know the U.S. Trustee
3 looks at these carefully. You're going to simplify the lives
4 of the U.S. Trustee's Office and of the Court, because we
5 really do go through these and review them.

6 I'm going to want to hear Mr. Masumoto with respect
7 to -- and I'm glad to see that all of these issues appear to be
8 resolved, and I think, in all likelihood, that's going to be
9 satisfactory to the Court. What I don't do is -- I mean, I
10 have a thick memo with numerous items on many of the fee
11 applications. As is customary, the U.S. Trustee winds up
12 agreeing on a fixed dollar amount reduction. It may be
13 separate for fees and expenses, but they're usually lump sum
14 amount reductions, and it wouldn't be appropriate for me to go
15 through and then start hitting people for things that have
16 already, sort of, been wrapped into what the U.S. Trustee has
17 done. So I typically will put great weight in a resolution
18 that the U.S. Trustee reaches.

19 So that's, really, all of the -- what I've had to say
20 is really aimed at the future. Let me hear Mr. Masumoto,
21 because your office, obviously, looked at these. There were
22 numerous applications. You had objections, some of which were
23 very substantial. So what can you tell me?

24 MR. MASUMOTO: Your Honor, we did negotiate with each
25 of the parties and generally as to the specific objections that

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1 were raised. As a general rule, with respect to vagueness
2 entries the objection with vague entries were if they corrected
3 their time entries we allowed -- we asked for a ten-percent
4 reduction in order to impose a deterrent. Otherwise there's no
5 incentive to do it right the next time.

6 THE COURT: Vagueness and lumping are something that
7 we look at carefully, and I know Mr. Masumoto and his
8 colleagues do, and your dealing with that, I think, is
9 completely appropriate.

10 MR. MASUMOTO: Thank you, Your Honor. And so -- but
11 we gave a choice. If the professionals decided that it was not
12 worth their time to make the adjustment we asked for a thirty-
13 percent reduction.

14 We did attempt to negotiate with each of the parties
15 with respect to each individual issue and not necessarily as a
16 global. In some cases we presented a global figure because
17 it's much more convenient than to go through every entry, and
18 in some cases --

19 THE COURT: These binders are mostly filled with fee
20 applications.

21 MR. MASUMOTO: Yes, Your Honor. You're certainly
22 familiar with that. And in some cases we couldn't necessarily
23 agree in terms of how to allocate the amounts reduced, but we
24 did agree on an overall amount, so in certain cases it was,
25 sort of, an overall approach, but in most instances we did

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1 attempt to negotiate specifically on the nature of the
2 objections, but we did negotiate separately with fees as well
3 as with the expenses and made appropriate adjustments and
4 accommodations where we thought it was effective or proper.

5 THE COURT: Thank you. Just coming back to where
6 people -- no, you can sit down, Mr. Masumoto. With respect to
7 expense reimbursement items, I expect to see the details
8 provided to Court. In some cases recently we've been getting
9 just summary schedules, and then it turns out that Mr.
10 Masumoto, quite correctly, has asked for the detail. We
11 haven't seen it.

12 If you expect to get your expenses approved, your
13 application for fees and expenses needs to include the detailed
14 breakdown of expenses.

15 Okay. Go ahead, Mr. Marinuzzi.

16 MR. MARINUZZI: Your Honor, just a couple of points.
17 We're always, as a firm, mindful of the U.S. Trustee's
18 concerns. We work with them on many cases, and we often try to
19 think of those things that are hot buttons for them and how to
20 accommodate them even without them raising objections. And in
21 this case what we did is, as opposed to the U.S. Trustee's
22 rules about transitory timekeepers, where it's five hours per
23 person per quarter, anything less than that gets written off,
24 we actually did it on a monthly basis.

25 Ultimately it was not something we needed to do, but

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1 we felt that this was a strong issue for the U.S. Trustee. We
2 wanted to get ahead of it. And we think it provided value to
3 the estate, saving an extra 80,000 dollars, roughly, depending
4 upon how Your Honor views Judge Chapman's decision in Ambac,
5 and we're not going to ask you to preview that.

6 Lumping -- we've agreed to write off that time.
7 Vagueness -- I think there's a little bit of a disagreement as
8 to what's vague versus what isn't. It's kind of hard to
9 resolve it when you're talking about dollars that are measured,
10 and it's just the effort to recreate time sheets. Honestly, if
11 we don't remember who from Kramer Levin we spoke with four
12 months ago we're not going to just make up a name. It's just
13 not the right way to do things. But going forward we're guided
14 accordingly.

15 I don't know if Your Honor has any specific questions
16 of the debtors' professionals. We have people either sitting
17 behind me in court today or on the phone. To the extent I
18 can't answer those questions, hopefully they can. I don't know
19 if Your Honor has any questions of the committee's
20 professionals or the professionals for the examiner, but
21 they're here in court as well.

22 THE COURT: Well, what I would like to have you do --
23 and I'm going to make one other comment, because you raise the
24 issue, and I know that the U.S. Trustee does raise the issue
25 about transitory timekeepers less than five hours. I don't

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1 have a blanket view about it. Let me just say that.

2 And I think the appropriate thing is to provide the
3 U.S. Trustee, in the first instance, or the Court, with enough
4 information if there are the so-called transitory timekeepers,
5 because two hours of a partner or a senior associate's time
6 who's an expert on a particular issue that arises may be more
7 cost effective than sending off somebody who's working on the
8 case full-time to the library to spend twenty hours figuring
9 out what two hours of somebody's time may do. I think there
10 obviously -- I think Mr. Masumoto and his colleagues wouldn't
11 be raising the issue about transitory timekeepers if there
12 wasn't some real -- an overall problem that occurs.

13 So I don't have a blanket view about it. I think
14 it's appropriate for the U.S. Trustee to ask for more
15 information, but I think it's a case-by-case basis.

16 MR. MARINUZZI: Understood.

17 THE COURT: Okay.

18 MR. MARINUZZI: Your Honor --

19 THE COURT: I think what you ought to do is, and I
20 don't know if you want to defer to -- I mean, I'd like you to
21 just go through with each of the applications, either you or --
22 I don't know that it has to be a whole group of people coming
23 up. If they do, fine. I'd just like to understand clearly
24 what the agreed adjustment is. I've read the objections. I
25 know what the objections were. Many of them had been agreed

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1 reductions before today. I gather the remaining ones that
2 hadn't been resolved now have been resolved. I'd just like to
3 get on the record what the initial request was, what the agreed
4 reduction with the U.S. Trustee has been.

5 MR. MARINUZZI: Your Honor, I could do that based on
6 the information in this chart before me.

7 THE COURT: That's fine.

8 MR. MARINUZZI: And we'll do it in alphabetical order,
9 starting with the debtors' professionals. The first firm that
10 was the subject of an objection from the U.S. Trustee was
11 Bradley Arant Boult Cummings LLP, and their total requested
12 fees were \$4,207,515.65. They've agreed to reduce those fees
13 by 70,032 dollars. Their expenses were requested in the amount
14 of \$157,682.41, and the U.S. Trustee has agreed that that
15 amount is appropriate.

16 And Your Honor, if Your Honor doesn't have a copy of
17 the chart I can hand one up.

18 THE COURT: I have the chart right here.

19 MR. MARINUZZI: Okay. Great. The next --

20 THE COURT: I will. I'm going to approve the Bradley
21 Arant fee application. Their fee application was 5,827 pages
22 long.

23 MR. MARINUZZI: Your Honor wants detail; there's
24 detail.

25 THE COURT: But the problem with it was -- and I don't

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1 know whether Mr. Masumoto has raised this or not. I think this
2 is an issue for the future. Not as to the amount. I'm
3 approving the amount. It's organized by client matter number,
4 with only five or six entries, maximum, on any given page. The
5 format of the application doesn't comport with the U.S. Trustee
6 guidelines, which require that time entries be organized by
7 project category, case administration, asset disposition, et
8 cetera. And within those categories, time and service entries
9 are to be reported in chronological order and under appropriate
10 project category. So reviewing the 5,800-page Bradley Arant
11 fee application -- it was difficult.

12 MR. BENDER: Your Honor, Jay --

13 THE COURT: Can you adjust how you're presenting
14 information?

15 MR. BENDER: First of all, my name is Jay Bender, and
16 I'm with Bradley Arant. I've got Wendell Allen, a partner of
17 mine, on the line.

18 THE COURT: Okay.

19 MR. BENDER: I reviewed it as well, and I couldn't
20 agree more with you, but I think that that's the way that we've
21 got to do it, certainly with the litigation matters, and Mr.
22 Allen might be able to explain this.

23 THE COURT: May I ask you this? Can you at least
24 prepare some summary chart that -- I'm not trying to make a lot
25 of extra work for you, but reviewing 5,800 pages that isn't

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1 organized in the way we generally require -- the U.S. Trustee
2 guidelines require, you need to see if you can figure out a way
3 of putting together -- and talk to Mr. Masumoto about it,
4 extracting data from all of -- and I know there's a lot of
5 cases.

6 MR. BENDER: We'll be happy to --

7 THE COURT: I don't know whether you've had any
8 suggestions about it, Mr. Masumoto, but it wasn't easy.

9 MR. MASUMOTO: Not at this time, Your Honor, but we'd
10 be happy to discuss it with them.

11 THE COURT: Why don't you see what you can --

12 MR. BENDER: We will, Your Honor.

13 MR. MASUMOTO: As you indicated, it was quite
14 voluminous.

15 THE COURT: Okay. All right?

16 MR. BENDER: We'll do it.

17 THE COURT: All right. But with the adjustment agreed
18 upon, they're approved.

19 MR. BENDER: All right. Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. MARINUZZI: Your Honor, next on the list is
22 Carpenter Lipps & Leland. They had requested total fees of
23 955,735 dollars and total expenses of \$334,924.08. The U.S.
24 Trustee's objection was resolved. Carpenter Lipps is reducing
25 their fees by 6,675 dollars and reducing their expenses by 890

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1 dollars.

2 MR. MASUMOTO: Your Honor, if I may?

3 THE COURT: Go ahead, Mr. Masumoto.

4 MR. MASUMOTO: I just wanted to indicate, just for
5 purposes that -- in this case the U.S. Trustee objected to
6 8,499 dollars in fees and reimbursement of \$221,262.29.

7 THE COURT: \$221,260.29.

8 MR. MASUMOTO: Right. And the reason for the minor
9 reduction is that, at best, the bulk of that expense had to do
10 with a company that, essentially, reviewed documents, and we
11 requested, actually, the invoices and documentation, which --

12 THE COURT: This was the litigation support vendor
13 that they were using.

14 MR. MASUMOTO: Yes. Lumen, I believe it was called.

15 THE COURT: Right.

16 MR. MASUMOTO: And each of the time entries were
17 pretty uninformative; essentially reviewing documents.
18 However, upon discussing it with counsel, and I did want to
19 mention, because I thought it was helpful, they had a very -- I
20 thought, a very effective check system. I guess they had a
21 system in place where they could monitor the amount of time
22 spent by each timekeeper and the number of documents reviewed
23 and, in fact, use that statistics to monitor, I guess, the
24 performance and effectiveness of the various individuals, which
25 seemed to me consistent with providing the kind of information

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1 that one would seek in a detailed timekeeping.

2 So, as Your Honor knows, sometime we have difficulty,
3 especially where there's a lot of discovery where a large
4 number of entries essentially duplicates itself by saying
5 "reviewing documents". But I thought -- I'm not sure that
6 everyone has a similar system in place, but I thought it was
7 particularly useful and effective, and, accordingly, that's why
8 we accepted their expense.

9 THE COURT: Okay. I'm going to approve the fees and
10 expenses as adjusted. One of the reasons I'm asking for
11 certification that airfare is all at coach is there were some
12 airplane tickets included in this that seemed at pretty high
13 dollar figures. There's someone from Carpenter Lipps who's
14 here. Can you confirm to me that all air, that all charges --
15 I don't care if you fly business class or first class just as
16 long as the estate isn't being asked to pay for anything more
17 than coach.

18 MR. BECK: All charges we have charged the debtors in
19 this case have been for coach airfare. We would apologize for
20 the fact that Delta is mugging us wildly for traveling in from
21 out of town these days, but we have no control over what Delta
22 is charging us.

23 THE COURT: Thank you for your representation. All
24 right. So that's approved.

25 MR. MARINUZZI: Your Honor, next on the list is

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1 Centerview Partners. They've requested total fees of 900,000
2 dollars, total expenses of 18,761.48. They've agreed to a
3 reduction in expenses of \$722.29 to resolve the U.S. Trustee's
4 objection.

5 THE COURT: Let me just find my notes, okay?

6 Mr. Masumoto, your objection to the expenses was
7 substantial, and part of it was that you didn't get sufficient
8 supporting documents. Are you satisfied you've received it
9 now?

10 MR. MASUMOTO: We did receive the supporting
11 documentation, Your Honor, and we're satisfied.

12 THE COURT: All right. I just want to make clear to
13 everybody, the Court expects to receive supporting
14 documentation for all expenses. I'm going to go ahead and
15 approve the Centerview application for fees with the agreed
16 reduction.

17 MR. MARINUZZI: Your Honor, so I'm clear when Your
18 Honor asks for supporting documentations, we detail by expense
19 the type, the amount, the date. You're not looking for
20 invoices from vendors.

21 THE COURT: No.

22 MR. MARINUZZI: Okay.

23 THE COURT: No. But --

24 MR. MARINUZZI: I just want to be clear.

25 THE COURT: For some of these applications we just see

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1 travel --

2 MR. MARINUZZI: Right. Understood.

3 THE COURT: -- and a number.

4 MR. MARINUZZI: Understood.

5 THE COURT: Okay.

6 MR. MARINUZZI: Next on the list, Your Honor, is
7 Curtis, Mallet-Prevost, Colt & Mosle.

8 THE COURT: Yes.

9 MR. MARINUZZI: They've requested total fees of
10 \$496,548.50 and expenses of \$3,093.40, and the U.S. Trustee's
11 objection has been resolved with a voluntary reduction in fees
12 of \$9,859.25.

13 THE COURT: Approved.

14 MR. MARINUZZI: Thank you. Next, Your Honor, is
15 Deloitte & Touche, and they've requested fees of \$690,583.50.
16 No expenses requested. No reductions. The U.S. Trustee has
17 agreed.

18 THE COURT: It's approved.

19 MR. MARINUZZI: Thank you. Dorsey & Whitney, total
20 fees of \$412,188.83, expenses of \$5,105.22. U.S. Trustee's
21 objection was resolved with a reduction in fees of \$1,173.50
22 and a reduction in expenses of \$1,656.54.

23 THE COURT: I'm going to go ahead and approve it , but
24 I want to make clear, whoever B. Smith (ph.) is, if they
25 continue to put seven hours per day with the same exact

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1 description, "Manage litigation and government investigations
2 and advise client on various regulatory compliance issues", day
3 after day, with hundreds of hours by that one timekeeper, next
4 time it happens, a different result.

5 MR. MARINUZZI: Thank you, Your Honor. Next firm is
6 Dykema Gossett. They've requested total fees of \$85,772.60;;
7 total expenses of \$2,192.49.

8 THE COURT: Just give me a second.

9 MR. MARINUZZI: Sure. That's docket number 2272, Your
10 Honor.

11 THE COURT: Well, I've got notes on all of this, so --

12 MR. MARINUZZI: Okay.

13 THE COURT: Go ahead.

14 MR. MARINUZZI: Your Honor, Dykema Gossett's agreed to
15 resolve the U.S. Trustee's objection by reducing its fee
16 request by 3,000 dollars and reducing its expenses by \$102.09.

17 THE COURT: Approved.

18 MR. MARINUZZI: Thank you. Next, Your Honor, is
19 Fortace LLC, requesting total fees of, original request
20 \$337,939, expenses of \$119,073.93. They've agreed to a
21 reduction of \$18,280 in fees to resolve the U.S. Trustee's
22 objection; no reduction in expenses.

23 (Pause)

24 THE COURT: Mr. Masumoto, were you able to satisfy
25 yourself that the airline tickets were coach?

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1 MR. MASUMOTO: Yes, Your Honor. We did raise it, and
2 they provided us with documentation.

3 THE COURT: Okay. I'm going to approve the
4 application. This goes to everybody, but this was true of
5 Fortace. The descriptions of the services need to be more
6 specific, rather than "attend meeting", "conference call with
7 MoFo".

8 MR. MARINUZZI: We'll convey that, Your Honor.

9 THE COURT: Okay.

10 MR. MASUMOTO: And, yes, Your Honor, just to be clear,
11 in our discussions, as a result of our discussions they did
12 provide us with revised time entries.

13 THE COURT: Thank you. Go ahead, Mr. Marinuzzi.

14 MR. MARINUZZI: Your Honor, next is FTI Consulting,
15 requesting total fees of 7.5 million dollars and total expenses
16 of \$385,757.98.

17 THE COURT: Let me find that before -- okay. Go
18 ahead.

19 MR. MARINUZZI: They've resolved the U.S. Trustee's
20 objection by reducing their total fees by 52,000 dollars, and
21 that is going to be a reduction against the carryover amount
22 and a reduction in expenses of 7,526 dollars. And with respect
23 to the KEIP/KERP issues, they are not today seeking approval of
24 59,225 dollars in fees.

25 THE COURT: Let me ask this. I thought that with

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1 respect to -- FTI had 315.4 hours on the KEIP/KERP motion for a
2 total of fees of 236,903 dollars. Mr. Masumoto?

3 MR. MASUMOTO: Your Honor, both in respect to Morrison
4 & Foerster and FTI, the amount of reduction we asked for the
5 KEIP and the KERP was based upon a rough approximation. It was
6 not the total amount, because Your Honor indicated the KERP was
7 approved. And based on the time entries, there was really no
8 way of determining how to allocate each and every time entry to
9 either the KEIP or the KERP, so the amount that we've requested
10 was, we thought, was an appropriate re -- I mean, it may not
11 have been the best, but it was an attempt to get a rough
12 approximation of the amount attributable to the KEIP.

13 So the amount we asked as a reduction was certainly
14 not the total amount spent on both the KEIP and the KERP, which
15 essentially were recorded, I guess, as sort of unitary time
16 entries by all the timekeepers. I believe in both cases we
17 applied a twenty-five percent reduction from the total
18 KEIP/KERP category of expenses as a measure of the --

19 THE COURT: That may have satisfied the U.S. Trustee,
20 but it didn't necessarily satisfy the Court. All right.

21 MR. MASUMOTO: I understand, Your Honor.

22 THE COURT: What I'm going to do is I'm going to
23 approve the FTI Consulting fees with the agreed adjustment, but
24 I want to make clear, I'm reserving the issue of fees and
25 expenses in connection with the KEIP/KERP for the subsequent

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1 hearing. And -- so, I may well raise -- there may be a further
2 adjustment that's made when the KEIP/KERP is taken up by the
3 Court at the next interim fee hearing.

4 The fact that I'm approving the fees today, the fact
5 that they include amounts of time attributable to the
6 KEIP/KERP -- we need to have a fuller discussion about it. So
7 just so it's clear to everybody, I may take back credit against
8 future fees for some additional amount.

9 MR. MARINUZZI: We understand, Your Honor. And part
10 of the reason why we're pushing it is we're trying to figure
11 out what the right amount is, because in connection with
12 Morrison & Foerster, it was the entirety of the project code
13 times twenty-five percent. The project code involves the OSM
14 discussions, TARP -- not just KEIP/KERP. So we actually want
15 to drill down with the U.S. Trustee to figure out what's really
16 at stake.

17 THE COURT: And I appreciate that. And that should
18 happen, because I just --

19 MR. MARINUZZI: And it will.

20 THE COURT: Okay.

21 MR. MARINUZZI: It will.

22 THE COURT: All right. Let's go on.

23 MR. MARINUZZI: FTI -- Your Honor, I don't remember if
24 Your Honor ruled on it.

25 THE COURT: I did.

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1 MR. MARINUZZI: Okay.

2 THE COURT: I approved it as presented, but I'm
3 reserving the right to --

4 MR. MARINUZZI: Understood, but just --

5 THE COURT: -- take some of it back.

6 MR. MARINUZZI: Just so we're clear on the total
7 amount of the fees, 59,225 dollars, which is the value that the
8 U.S. Trustee attributed roughly to KEIP/KERP, it's not -- we're
9 not asking for approval, or FTI is not asking for approval of
10 that today.

11 THE COURT: Right.

12 MR. MARINUZZI: Okay. KPMG, total fees requested of
13 656,390 dollars; total expenses of \$46,449.02. The U.S.
14 Trustee has agreed to waive its objection to KPMG's interim
15 request.

16 THE COURT: Let me just -- I have to find it in my
17 notes. I didn't have these in alphabetical order. Approved.

18 MR. MARINUZZI: Next, Your Honor, is Kurtzman Carson
19 Consultants LLC seeking total fees of 94,074 dollars; zero
20 expenses. And the U.S. Trustee has agreed to withdraw its
21 objection.

22 THE COURT: Approved.

23 MR. MARINUZZI: Locke Lord, seeking fees of
24 \$261,177.78 and expenses of \$2,628.99. They have resolved the
25 U.S. Trustee's rejection by reducing their fee request by 2,054

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1 dollars.

2 THE COURT: Give me a second.

3 (Pause)

4 THE COURT: Approved.

5 MR. MARINUZZI: Thank you, Your Honor. The next
6 application is from Mercer (U.S.) Inc., seeking total fees of
7 \$43,618.92, expenses of \$6,118.74. They've resolved the U.S.
8 Trustee's objection by reducing their fees by \$295.80.

9 THE COURT: Not approved. Mercer's going to have to
10 be carried to the next hearing.

11 MR. MARINUZZI: Understood, Your Honor.

12 THE COURT: This is on the KEIP and the KERP.

13 MR. MARINUZZI: Okay. Next, Your Honor, is Morrison &
14 Cohen seeking total fees of \$325,625.50, and total expenses of
15 \$4,248.73. And they've agreed to resolve the U.S. Trustee's
16 objection by reducing their fees in the amount of 6,586 dollars
17 and their expenses by \$1,149.50.

18 THE COURT: Approved.

19 MR. MARINUZZI: Thank you, Your Honor. Next is
20 Morrison & Foerster, seeking total fees of \$14,667,747.50 and
21 total expenses of \$598,549.72. And we've agreed to carry, till
22 the next interim hearing, fees in the amount of 308,539
23 dollars, which is the amount that the U.S. Trustee had
24 quantified in its objection, understanding Your Honor's full
25 reservation that it might actually be a bigger number. And

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1 we've agreed to reduce the total fee request by 85,685 dollars
2 and the total expense request by 11,180 dollars in resolution
3 of the U.S. Trustee's objection.

4 (Pause)

5 THE COURT: I'm going to approve the Morrison &
6 Foerster fees with the agreed reduction, with the same caveat
7 as FTI. It was -- it's hard to breakdown KEIP/KERP, first
8 time, second time. Our review showed the category of
9 "employment matters", which could be much broader than just the
10 KEIP and KERP, I recognize that, was 1,234,156 dollars. So I'm
11 reserving -- I'm approving the fees subject to the compromise
12 with the U.S. Trustee, but reserving this issue with respect to
13 the KEIP. We'll take up another time.

14 MR. MARINUZZI: Understood, Your Honor. Thank you,
15 Your Honor. Next is Orrick, Herrington & Sutcliffe requesting
16 total fees of \$733,357.07 and total expenses of \$678.12.
17 They've resolved the U.S. Trustee's objection by reducing their
18 fees in the amount of \$59,530.50; no reduction in expenses.

19 MS. FELDER: Actually -- this is Debra Felder on
20 behalf of Orrick. Our agreed reduction with the U.S. Trustee
21 is actually 54,169.

22 THE COURT: Is that correct, Mr. Masumoto?

23 MR. MASUMOTO: Yes, I believe that's correct, Your
24 Honor.

25 THE COURT: All right.

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1 MR. MARINUZZI: 54,169.

2 THE COURT: Okay. We'll make sure the order is
3 correct.

4 MR. MARINUZZI: Correct.

5 THE COURT: It's approved.

6 MR. MARINUZZI: Thank you, Your Honor.

7 MS. FELDER: Thank you, Your Honor.

8 MR. MARINUZZI: Next is Prince Lobel Tye, requesting
9 total fees of \$152,107.20 and expenses of \$12,661.62. They've
10 resolved the U.S. Trustee's objection by reducing their fees by
11 5,007 dollars and expenses by 761 dollars.

12 THE COURT: Approved.

13 MR. MARINUZZI: Reed Smith, they've requested total
14 fees \$67,224.50; expenses of \$581.22. They've resolved the
15 U.S. Trustee's objection by reducing their fees by \$2,095.05.
16 No reduction in expenses.

17 THE COURT: Approved.

18 MR. MARINUZZI: Thank you, Your Honor. Next is
19 Rubenstein Associates; total fee request of \$25,709.75, total
20 expenses of \$5,055.83. They've agreed to resolve the U.S.
21 Trustee's objection by reducing their fees by the amount of 562
22 dollars and expenses by \$1,423.15.

23 THE COURT: I'm going to approve that. With respect
24 to Rubenstein, I want to make clear comments I made earlier.
25 Travel -- there are some entries that appear to be travel time

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1 to court. And travel within New York City -- travel time in
2 New York City is not compensable. All right. So --

3 MR. MARINUZZI: We will make sure they understand
4 that, Your Honor.

5 THE COURT: Okay.

6 MR. MARINUZZI: Next is Severson & Werson seeking
7 total fees of \$1,242,804.45 and expenses of \$124,486.44. After
8 discussions with the U.S. Trustee, the U.S. Trustee has agreed
9 to withdraw their objection to the Severson application.

10 THE COURT: Mr. Masumoto, there -- with respect to the
11 Severson & Werson application, there was a \$22,487.50 charge
12 for services rendered by a CPA without further explanation.
13 Were you able to get an explanation of that?

14 MR. MASUMOTO: No, Your Honor. It's an issue we did
15 not raise. We may have overlooked it.

16 THE COURT: Is someone from Severson present in court
17 or on the phone?

18 MR. GECK: Yes, Your Honor. This is Duane Geck for
19 Severson & Werson.

20 THE COURT: Okay, this is at Exhibit E-1, page 89.
21 Can you explain what the CPA services for \$22,487.50 were?

22 MR. GECK: Your Honor, off the top, I cannot, because
23 of the vast volume of cases here. I do not know which of the
24 240 or so cases that is associated with.

25 THE COURT: All right. With respect to Severson &

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1 Werson, I'm going to approve the total fees requested, defer
2 the issue of expenses. I'm not approving any expenses. I need
3 more detail. I'll give you the list: May 24th, 2012, the
4 \$22,487.50 charge for services rendered by CPA without an
5 explanation; June 29th, 2012, duplicate charges for outside
6 copies, \$474.19. They're at pages 268 and 274. Duplicate
7 charges on June 29th for eScribers LLC and for court services,
8 \$157.20.

9 Charges for transportation to hearings or depositions
10 merely provide the cost and description where the attorney
11 went; it does not break down the form of transportation. For
12 instance, on May 24th, 2012, there's a charge of \$97.73 for
13 "transportation: attend hearing on client's motion for summary
14 judgment", without any detail as to what the charges cover;
15 it's at page 217. On June 13th, 2012, two charges each for
16 \$51.44 for transportation to a deposition. June 11th, 2012,
17 duplicate charge of \$209.97 for transportation to attend
18 mediation. And this charge seems to include \$70.22 for lunch
19 for one person.

20 There's a duplicate Westlaw charge of 875 dollars on
21 June 29th, 2012. See Exhibit E-2, at pages 225 and 230.
22 There's a 1,500 dollar charge on May 24th, 2012, for
23 cancellation of an arbitration session. So, I want more -- I'm
24 not approving any of the expenses. I need more detail provided
25 and an explanation. You can bring it on at the next -- the

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1 expenses can be brought on at the next fee hearing.

2 MR. MARINUZZI: Okay, Your Honor.

3 MR. GECK: This is Duane Geck; we understand, Your
4 Honor.

5 THE COURT: Okay.

6 MR. MARINUZZI: Your Honor, next is Towers Watson
7 Delaware, Inc. seeking fees of \$34,355.03, no expenses. This
8 was unopposed by the U.S. Trustee.

9 THE COURT: Approved.

10 MR. MARINUZZI: Next is Troutman Sanders, Your Honor,
11 seeking total fees of \$218,509.74 and expenses of \$3,714.82.
12 And they've resolved the U.S. Trustee's objection by reducing
13 their fees by \$762.78 and expenses by 653 dollars.

14 THE COURT: There was an expense item \$1,562.50 for
15 associate counsel fees and expenses. Can -- is someone from
16 Troutman Sanders here? I mean, the issue -- I don't know
17 whether these were ordinary-course professionals or whether --

18 MR. MARINUZZI: Your Honor, I don't know. I --

19 THE COURT: -- whether it required a 327 retention.
20 Mr. Masumoto, can you shed any light on this?

21 MR. MASUMOTO: Your Honor, it's not an issue that we
22 raised with them.

23 THE COURT: It's for Finkel Law Firm, LLC.

24 MR. MANNING: Judge, this is Jason Manning from
25 Troutman Sanders.

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1 THE COURT: Yes.

2 MR. MANNING: That was a local counsel that needed to
3 be retained in a different state.

4 THE COURT: Mr. Masumoto, do you consider that under
5 ordinary-course professionals or what?

6 MR. MASUMOTO: It seems that the practice varies, Your
7 Honor. Had we noticed it we would have required at least the
8 time records as we did in other cases. I don't --

9 THE COURT: All right. I'm going to approve --
10 Troutman Sanders continue to do work, right?

11 MR. MARINUZZI: Correct; that's correct, Your Honor.

12 THE COURT: I would direct that they provide Mr.
13 Masumoto with details of that expense. I'm approving it. If
14 there's an issue, Mr. Masumoto, you'll raise it again in the
15 future, okay?

16 MR. MASUMOTO: Very well, Your Honor.

17 THE COURT: All right.

18 MR. MARINUZZI: Your Honor, I'm advised by Mr. Bender
19 of Bradley Arant that there's an additional reduction he wants
20 to advise the Court of.

21 THE COURT: Okay.

22 MR. BENDER: Yes, first for the record, I believe that
23 the amount of reduction we agreed to with the U.S. Trustee was
24 \$77,032.30, and -- which is 7,000 more than --

25 THE COURT: More, yeah.

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1 MR. BENDER: -- what was in the chart. And I'm sorry;
2 I didn't see the chart before coming up here.

3 THE COURT: Okay. I appreciate your raising it.

4 MR. BENDER: We also want to note that in the response
5 that we filed to the objection we noted that through the
6 reconciliation process with the debtor, that there were some
7 additional reductions that we made. And so, the final numbers
8 after taking into account the adjustments and the objection
9 would be that our allowed fee amount would be \$4,060,788.24.
10 That's just for fees. And expenses would be \$148,999.34.

11 THE COURT: All right. I just -- reconcile it with
12 Mr. Masumoto at the end and the order ought to properly reflect
13 that --

14 MR. BENDER: All right, thank you.

15 THE COURT: -- and I appreciate your calling it to the
16 Court's attention.

17 MR. MARINUZZI: Your Honor, before I turn it over to
18 Mr. Mannal or Ms. Ringer on the committee's professional
19 applications, I just wanted to raise with the Court the issue
20 of the holdback --

21 THE COURT: Yeah.

22 MR. MARINUZZI: -- which is something obviously at the
23 end of the year, professionals would like to be released. I'm
24 advised that as of November 30th, the company was sitting on
25 almost 1.5 billion dollars in cash, over 300 million of which

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1 was unencumbered cash with sales that we hope are going to
2 close next month. And typically, and it varies --

3 THE COURT: What is -- what's the holdback right now?
4 It's --

5 MR. MARINUZZI: It's twenty percent.

6 THE COURT: Twenty percent.

7 MR. MARINUZZI: It's twenty percent,

8 THE COURT: Mr. Masumoto?

9 MR. MASUMOTO: Your Honor, we normally defer to the
10 Court as to what portion of that to release. As Mr. Marinuzzi
11 indicated, there doesn't appear to be an issue of
12 administrative insolvency.

13 THE COURT: Right.

14 MR. MASUMOTO: So, we'll defer to the Court on the
15 amount.

16 THE COURT: I saw some of the applications asked that
17 it be -- there be no holdback, but we'll do it in stages -- ten
18 percent.

19 MR. MARINUZZI: Thank you, Your Honor. Okay, with
20 that, I will --

21 THE COURT: And I think, you know -- let me put a
22 little more flesh on that. You're obviously at a critical
23 stage in the case. We talked about that earlier this morning.
24 The plan process really needs to move forward. One of the real
25 touchstones for me in terms of reducing the holdback, not only

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1 what the cash position of the company is and its ability to
2 pay, is the progress in the case as a whole. So, I'll reduce
3 it to ten percent now, okay?

4 MR. MARINUZZI: Thank you, Your Honor. All right.
5 I'll turn it over to Mr. Mannal --

6 THE COURT: Thank you.

7 MR. MARINUZZI: -- for the comm -- oh, Ms. Ringer, for
8 the committee's professionals.

9 THE COURT: All right.

10 MS. RINGER: Good afternoon, Your Honor. Rachael
11 Ringer from Kramer Levin, counsel to the committee. I'll
12 follow Mr. Marinuzzi's lead and just run through each of the
13 committee professionals and they -- each of them have reached a
14 resolution with the United States Trustee.

15 THE COURT: Okay.

16 MS. RINGER: First is AlixPartners. They initial --

17 THE COURT: Let me find my notes.

18 MS. RINGER: Oh, sure.

19 THE COURT: Just give me a second. I have it. Go
20 ahead.

21 MS. RINGER: First is AlixPartners. They initially
22 requested \$2,205,724.75 in fees and \$34,011.46 in expenses.
23 They have agreed to a further reduction in fees of 60,360
24 dollars and \$317.99 in expenses.

25 THE COURT: Approved.

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1 MS. RINGER: Next is Kramer, Levin, Naftalis &
2 Frankel. The initial fee request was \$10,675,061.50 in fees
3 and 305,000 dollars -- \$305,828.34 in expenses.

4 THE COURT: I think it was 8 -- the chart says
5 305,820.34.

6 MS. RINGER: Oh, yes, Your Honor. I apologize if I
7 misspoke.

8 THE COURT: No, it's okay.

9 MS. RINGER: In an effort to reach a resolution with
10 the United States Trustee, Kramer Levin agreed to a further
11 reduction of its fees in the amount of \$163,825.25 and a
12 further reduction in expenses of \$2,654.86.

13 THE COURT: You can go back to the office and tell Mr.
14 Eckstein that you carried the ball. They're approved.

15 MS. RINGER: Thank you, Your Honor. And finally,
16 Moelis & Company. They're initial request was \$1,391,129.03 in
17 fees and 20,000 dollars -- or, \$20,194.72 in expenses. They
18 have agreed to a further reduction in expenses of \$1,875.73.

19 THE COURT: Approved.

20 MS. RINGER: Thank you. And we would also request
21 that the same release of the holdback of ten percent apply to
22 the committee's professionals.

23 THE COURT: Yes, it's across the board.

24 MS. RINGER: Thank you, Your Honor.

25 MR. LEMAY: I think it's my turn. Your Honor, David

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1 LeMay from Chadbourne & Parke. I'm counsel for Arthur
2 Gonzalez, the examiner that you've appointed in this case. We
3 have three fee applications for the examiner and the examiner's
4 professionals. Examiner Gonzalez applied for \$86,137.50 in
5 fees and no expenses. He is obviously a very accurate
6 timekeeper. The United States Trustee did not object to Mr.
7 Gonzalez's fees. And therefore, I believe those are in not in
8 any way an issue.

9 THE COURT: Mr. Masumoto?

10 MR. MASUMOTO: Yes, Your Honor, my colleague examined
11 the examiner's fees very closely and found no fault with them.

12 THE COURT: Approved.

13 MR. LEMAY: Thank you, Your Honor. Chadbourne &
14 Parke, my firm, is Examiner Gonzalez's counsel. We submitted
15 an application for \$3,295,849.50 of fees and \$127,003.11 in
16 expenses. And we had engaged in the same process that was, you
17 know, previously discussed with Mr. Masumoto's office and his
18 colleagues. And as a result of that process, we agreed to
19 reduce our fees by a total of \$19,414.59 and to reduce our
20 expenses by a total of \$13,577.70 for a combined total fee and
21 expense reduction of \$32,992.29.

22 THE COURT: Mr. Masumoto?

23 MR. MASUMOTO: Yes, that's correct, Your Honor.

24 THE COURT: All right. Approved.

25 MR. LEMAY: Thank you, Your Honor. Mesirow is the

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1 examiner's financial advisors. They resolved their issues with
2 the United States Trustee yesterday, too late to be included in
3 the amended agenda, but I do believe that it is reflected in
4 the chart that was given to Your Honor, apparently, by the
5 debtors' counsel. I'll run through those numbers for you.

6 Mesirow's fee application was for 3,007,275 dollars
7 and they sought for expenses, 30,048 dollars. Pursuant to the
8 discussions with the United States Trustee's office, Mesirow
9 agreed to reduce their fees by 27,358 dollars and their
10 expenses by 1,491 dollars. And I haven't done the math to
11 combine those two, but perhaps it's on the -- I don't know --
12 is it on the chart what those two add up to? I just --

13 UNIDENTIFIED SPEAKER: 28,849.

14 MR. LEMAY: 28,849 total reduction.

15 THE COURT: Right. It's approved as well.

16 MR. LEMAY: Thank you, Your Honor. And I assume the
17 examiner's professionals are subject to the same holdback
18 release scheme as the other professionals.

19 THE COURT: Yes.

20 MR. LEMAY: Thank you, Your Honor.

21 MR. MARINUZZI: Your Honor, thank you. That concludes
22 the agenda for today. We want to thank the Court and the court
23 staff for all of its hard work on today's hearing. We can see
24 the binders from here. Thank you very much.

25 THE COURT: You --

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1 MR. MARINUZZI: Happy and healthy New Year.

2 THE COURT: I'm sure you like to end the year with fee
3 applications approved, so --

4 MR. MARINUZZI: It's better than not approved, Your
5 Honor, for sure. Thank you.

6 THE COURT: Okay, we're adjourned.

7 MR. MARINUZZI: Thank you.

8 THE COURT: Everybody have a very happy holiday.

9 MR. MARINUZZI: Same to you.

10 MR. MASUMOTO: Thank you, Your Honor.

11 (Whereupon these proceedings were concluded at 2:51 PM)

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I, Penina Wolicki, certify that the foregoing transcript is a
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